

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

Application of the San Luis Obispo County Public Works Department for an order authorizing construction of an at-grade pedestrian crossing in San Miguel, California crossing Union Pacific Railroad in the vicinity of 16<sup>th</sup> Street, County of San Luis Obispo.

Application 04-07-001  
(Filed July 1, 2004)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**1. Introduction**

Pursuant to Rule 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this scoping memo confirms the category for this proceeding, designates the principal hearing officer, and sets forth the issues and schedule for hearing pursuant to informal telephone conferences with the parties, the last of which was held on December 1, 2005.

Application 04-07-001 was filed on July 1, 2004, by the San Luis Obispo County Public Works Department (the County). The County seeks authorization to install an at-grade pedestrian crossing of tracks of the Union Pacific Railroad Company (Union Pacific) in the vicinity of 16<sup>th</sup> Street in San Miguel. The County states that the unguarded tracks are being crossed daily by 80 to 100 children and their parents to reach the Lillian Larsen Elementary School, and that the number will grow because of new housing development in the area. Union Pacific protests the application, arguing that two other nearby crossings already exist and that, in any event, a grade-separated crossing over or under the tracks would be safer for pedestrians. The Commission's Rail Safety and Carriers Division

(Staff) has urged the County to avoid a piecemeal approach to rail crossings and to consider a more comprehensive plan for this rapidly growing community.

The parties conducted an on-site review and negotiation in May 2005, and the County, at the urging of Union Pacific and Staff, agreed to conduct an engineering evaluation of a grade-separated crossing and adequate fencing to discourage pedestrians from crossing the tracks. The evaluation was completed in November 2005 and the parties discussed it in a meeting on November 30, 2005. There has been no change in position by the parties, and they ask that the matter be set for public hearing, including both a public participation hearing and an evidentiary hearing.

## **2. Categorization of Proceeding; Principal Hearing Officer**

By Resolution ALJ 176-3136 on July 8, 2004, the Commission preliminarily categorized this proceeding as "Ratesetting," as defined in Rule 5(c) of the Rules of Practice and Procedure. The categorization of Ratesetting is confirmed. This ruling is appealable only as to category of this proceeding under the procedures in Rule 6.4.

The principal hearing officer for this proceeding is Administrative Law Judge (ALJ) Glen Walker.

## **3. Ex Parte Rules**

The Commission's ex parte rules applicable to this proceeding are set forth in Rules 7(c) and 7.1. These ex parte rules apply to all parties of record and, more broadly, to all persons with an interest in any substantive matter. The category of individuals subject to our ex parte rules is defined in Pub. Util. Code § 1701.1(c)(4).

#### **4. Scoping Memo**

The scope of this proceeding is governed by Pub. Util. Code §§ 1201 through 1205. Section 1201 provides in pertinent part:

No public road, highway, or street shall be constructed across the track of any railroad corporation at grade ... without first having secured the permission of the commission .... The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

Applicants' position is that the primary issues to be determined in this proceeding is whether an at-grade crossing at 16<sup>th</sup> Street in San Miguel is necessary for the safety of children now crossing the tracks at unprotected points on their way to and from school. Union Pacific takes the position that state policy discourages the addition of a new rail crossing unless at the same time other nearby crossings can be closed, and that a better alternative to the 16<sup>th</sup> Street crossing would be fencing that would direct pedestrians to an improved and existing 14<sup>th</sup> Street crossing. Specifically, parties at hearing will be asked to address the following issues:

- Have the parties conducted an on-site diagnostic meeting with Commission staff and, if so, what were the results of that meeting?
- Since the request is for a pedestrian crossing (as opposed to a vehicular crossing), why is a grade-separated crossing impractical?
- How many trains are expected to use the proposed new crossing and what are the speeds of the trains during such use?
- Is the application an outgrowth of any general plan for the area?

- Has the proposed crossing been the subject of public notice and hearings?
- What is the projected daily pedestrian traffic for the proposed crossing?
- How will the proposed crossing enhance public safety?
- How will applicant comply with safety requirements for the proposed crossing?
- How will the proposed crossing be financed?
- What is the status of applicant's environmental review of the proposed crossing, and does applicant intend to file a Notice of Exemption with the county and state?

## **5. Public Participation Hearing**

The County has requested that the Commission conduct a public participation hearing in order to take the comments of those concerned with the proposed new crossing. A public participation hearing will be conducted at 7:00 p.m. Wednesday, April 19, 2006, in San Miguel. The location of the hearing will be announced later. Once a location is announced, the County is directed to provide notice of the public participation hearing to interested parties.

## **6. Procedural Schedule**

The schedule below is adopted for the service of testimony and hearing. Dates for post-hearing briefs will be decided at the time of hearing.

County serves direct written testimony ..... January 27, 2006  
Protestant serves responsive written testimony ..... February 27, 2006  
County serves written rebuttal testimony ..... March 17, 2006  
Public Participation Hearing..... 7:00 p.m., April 19, 2006  
Evidentiary hearing in San Miguel ..... 10:00 a.m., April 20 and 21, 2006

The location of the evidentiary hearing in San Miguel will be announced later.

## **7. Discovery Matters**

In the event that parties are not able to resolve any disputes over discovery on a reasonably prompt basis, they are directed to bring the dispute before the Commission in the form of a motion to compel. Any such motion shall identify specifically the nature of any dispute, with justification for the production of any discovery materials. Responses to such motions shall be filed and served within three business days.

**IT IS RULED** that:

1. This ruling confirms the categorization of this proceeding as ratesetting.
2. The principal hearing officer for this proceeding is Administrative Law Judge Glen Walker.
3. The ex parte rules set forth in Rule 7(c) and 7.1 shall apply to this proceeding.
4. The scope of this proceeding is described in Section 4 above, and the procedural schedule described in Section 6 is adopted.
5. A public participation hearing shall be conducted at 7:00 p.m. Wednesday, April 19, 2006, with the location of the hearing to be announced.

Dated December 8, 2005, at San Francisco, California.

/s/ SUSAN P. KENNEDY  
Susan P. Kennedy  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated December 8, 2005, at San Francisco, California.

          /s/ ELIZABETH LEWIS            
Elizabeth Lewis

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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