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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 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  
(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)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
DETERMINING THE SCOPE, SCHEDULE, AND NEED FOR HEARING**

## **1. Summary**

This Scoping Memo and Ruling (Scoping Memo) sets forth the scope, future procedural schedule, need for a hearing, issues to be addressed, and designates the principal hearing officer to facilitate the efficient processing of this consolidated proceeding.

This ruling finds that an evidentiary hearing is necessary with respect to the issues related to Application (A.) 07-05-013. This ruling further finds that an evidentiary hearing is not necessary with respect to the other nine applications in this consolidated proceeding. The ongoing procedural schedule included herein calls for an interim decision to address the nine applications not subject to hearing, and a later decision to address A.07-05-013 and close the proceeding.

## **2. Background**

The Exposition Metro Line Construction Authority (Expo Authority) was created by legislation<sup>1</sup> for the specific purpose of constructing the Exposition Boulevard Corridor Light Rail Transit Line. This is a new 8-½ mile light rail transit line extension that will run between Los Angeles and Culver City. Expo Authority filed the 10 subject applications for authority to construct a series of 38 rail crossings along the new line. Eleven of the proposed crossings would be grade-separated, and the other 27 constructed at-grade.

## **3. Consolidation**

The 10 subject applications are related by fact and law. By rulings dated April 23, 2007 and May 24, 2007, the assigned Administrative Law Judge (ALJ) consolidated the above proceedings, pursuant to Rule 7.4 of the Commission's

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<sup>1</sup> Pub. Util. Code § 132600.

Rules of Practice and Procedure (Rules). No party objected to the consolidation, and the ALJ rulings regarding consolidation are confirmed.

#### **4. Procedural History**

All 10 of the subject applications were protested by Expo Communities United (ECU), a coalition of neighborhood community groups. Staff of the Commission's Consumer Protection and Safety Division (CPSD) also protested A.07-01-017, but withdrew its protest on June 25, 2007 as the result of an amendment to that application filed by Expo Authority. Neighbors for Smart Rail, another community group, also filed a formal response to A.07-05-013.

In light of the active protests, the Commission preliminarily determined, by resolution or by Notice of the Chief ALJ, that a hearing would be necessary in this consolidated proceeding. The procedural history of events, to date, is listed below:

<u>Event</u>	<u>Dates (all 2007)</u>	<u>Location</u>
Prehearing Conference (PHC)	April 5	Los Angeles
Workshop	July 18	Los Angeles
PHC (2 <sup>nd</sup> )	July 19	Culver City
Mediation Conference <sup>2</sup>	August 14-15	Los Angeles

As directed at the second PHC, Expo Authority and ECU filed opening briefs on September 7, 2007, and reply briefs on September 17, 2007. Expo Authority additionally filed clarifying information to its testimony on October 9, 2007 (as directed by ALJ Ruling dated September 27, 2007).

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<sup>2</sup> No settlements were reached as the result of mediation.

## **5. Category of Proceeding**

By Commission resolution and/or by Notice of Reassignment filed by the Chief ALJ, the Commission determined the category of this consolidated proceeding is ratesetting. No party has objected to this categorization.

## **6. Need for Evidentiary Hearings**

The parties disagree on whether evidentiary hearings are necessary. ECU's position generally is that all of the subject applications, individually and collectively, should be subject to hearing. Expo Authority, on the other hand, posits that hearings are unnecessary and that the consolidated proceeding now should stand as submitted.

After considering the entirety of the record in this proceeding to date, I find that an evidentiary hearing is necessary only with respect to the issues related to A.07-05-013; and therefore also find that an evidentiary hearing is not necessary with respect to the other nine applications in this consolidated proceeding. The reasons for these findings are explained below.

### **6.1. General Analysis of All Applications**

Protestant ECU's general position is that all crossings along the proposed new transit line should be grade separated, and that most or all of the separations should be constructed underground below the street surface. Expo Authority argues that the proposed new line is a light rail transit system and that, by design, the crossings in most locations should be at-grade to allow the public easy access to the trains and train stations.

Except as to matters related to A.07-05-013 (discussed below), I find that an evidentiary hearing is not necessary in this consolidated proceeding for the following reasons:

1. Generally, matters discussed in the ECU protests contain information and data not directly related to the rail crossing safety oversight responsibilities of the Commission, and other general undefined and unexplained transportation matters with no link to the proposed crossings. These matters include: (a) the planning, funding and forecasting strategies of the Los Angeles County Metropolitan Transportation Authority; (b) the general transportation policy intentions of the state legislature; (c) the cost and benefits of bus and rail operations; (d) auto and rail traffic patterns away from the crossing sites and/or on other unrelated rail or highway systems; and, (e) federal transportation funding mechanisms related to the overall project.
2. The content of the protests is overly vague and without a meaningful description of the facts constituting the grounds for the protests, as required by Rule 2.6. These protests mostly contain only non-specific environmental concerns, and a recommendation that Expo Authority seek some “other safety solutions” regarding the proposed crossings, but no description or recommendation regarding the proposed solutions.
3. In those areas where the ECU protests do involve issues of Commission oversight (i.e., the practicability of grade separations, traffic patterns at the crossing sites, and crossing configuration and alignment), the issues are not adequately explained or sufficiently analyzed by ECU pursuant to the standards of Rule 2.6.; and/or these issues have been adequately addressed by Expo Authority in its applications and other filings.

For the reasons stated above, I find that no issues of relevant material fact were identified or shown by the protestant, except for matters related to A.07-05-013. The presiding officer, therefore, will proceed to the issuance of a

proposed decision with respect to the other nine applications, without an evidentiary hearing but based on the record in this consolidated proceeding.

## **6.2. A.07-05-013**

In A.07-05-013, Expo Authority requests authorization to construct a four-quadrant two-track at-grade crossing at Farmdale Avenue, in the City of Los Angeles. The proposed crossing is adjacent to Dorsey High School. High volumes of pedestrian and vehicular traffic are projected at this crossing during the peak periods before and after school hours, and both vehicles and pedestrians would cross at-grade.

Unlike the other nine applications in this proceeding, issues of material fact remain in dispute between the parties regarding A.07-05-013 such that scheduling an evidentiary hearing is necessary. These issues include high traffic volumes, the types of crossing warning devices, the special needs of student populations, and the necessity and practicability of a grade separation at Farmdale Avenue.

## **7. Scope and Issues to be Addressed**

### **7.1. Issue**

The primary issue to be addressed in the evidentiary hearing is whether the proposed crossing at Farmdale Avenue should be grade-separated for vehicles and pedestrians, grade separated only for pedestrians with vehicles crossing at-grade, or at-grade for all traffic as proposed in A.07-05-013. The parties shall address the practicability of such crossing configurations.

### **7.2. Scope**

The scope of the evidentiary hearing shall include whether Expo Authority has met its burden of proving that the proposed crossing at Farmdale Avenue

meets the Commission's standards. In making that determination, the Commission will look to the following regarding practicability:<sup>3</sup>

1. A demonstration that there is a public need for the crossing;
2. A convincing showing that Expo Authority has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation;
6. Staff's recommendation, including any conditions; and
7. Commission precedent in factually similar crossings.

### **7.3. CPSD Staff Role**

CPSD is no longer an active protestant and now acts in an advisory role in this proceeding. However, in light of Item 6 (above in Section 7.2) CPSD shall be prepared, should it be necessary, to offer testimony and/or evidence at the hearing on its recommendations regarding the crossing at Farmdale Avenue. CPSD is not required to serve prepared testimony prior to the hearing as its participation will be advisory in nature.

### **7.4. Evidentiary Hearing**

At the evidentiary hearing, we expect evidence to include a discussion of the above issues. The weight accorded to each will vary, depending on our evaluation of the overall presentation. Applicant bears the burden of proving safety, rather than the protestant proving unsafe conditions, and the safety of a

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<sup>3</sup> As described in Decision (D.) 03-12-018, D.07-03-027 and other orders.

proposed at-grade crossing at Farmdale Avenue must be convincingly shown. We expect evidence on future pedestrian and vehicle traffic over the crossing, the protective measures to be employed, the sight lines for trains and vehicles, the speed of trains and vehicles at the crossing, the number of train movements and length of trains, the ease of evasion of crossing protection by vehicles and pedestrians, and any other factors peculiar to the crossing

## 8. Public Participation Hearing

At both of the PHCs, the assigned ALJ advised the parties that a Public Participation Hearing (PPH) may be held in these consolidated proceedings should an evidentiary hearing be scheduled. In light of the evidentiary hearing now scheduled, a PPH will be held on November 5, 2007, as set forth in the schedule below, in order to provide the public an opportunity to appear and be heard. The PPH will be limited strictly to issues related to A.07-05-013.

The applicant, Expo Authority, is directed to facilitate a PPH pursuant to the schedule herein. The Commission's Los Angeles Public Advisor office is available to assist Expo Authority in coordinating the PPH.

## 9. Schedule

The ongoing procedural schedule shall be:

Event	Date
<b>All Applications Except A.07-05-013</b>	
Proposed Decision	November 20, 2007
Commission Decision	December 20, 2007
<b>A.07-05-013</b>	
Public Participation Hearing Dorsey High School Student Cafeteria 3537 Farmdale Avenue Los Angeles, CA 90016	November 5, 2007, 6:30 – 9:00 p.m.
Evidentiary Hearing	November 6, 2007 at 10:00 a.m.



<b>Event</b>	<b>Date</b>
Culver City Hall Council Chambers 9770 Culver Boulevard, 1st Floor Culver City, CA 90232	November 7, 2007 (if necessary)
Opening Briefs	November 30, 2007
Reply Briefs	December 14, 2007
Proposed Decision	January 15, 2008
Commission Decision	February 14, 2008

The assigned Commissioner or ALJ may modify the schedule as necessary.

#### **10. Principal Hearing Officer**

Pursuant to Rule 7.3 of the Commission's Rules, Commissioner Simon designates ALJ Kenneth Koss as the presiding officer.

#### **11. *Ex Parte* Communications**

In ratesetting proceedings such as this, *ex parte* communications are subject to the restrictions set forth in Rule 8.2, and the reporting requirements in Rule 8.3.

#### **12. Service List**

A permanent service list was established at the close of the first PHC, and revised at second PHC. The updated service list is attached to this ruling.

**IT IS RULED** that:

1. The category of this proceeding is ratesetting.
2. Based on the issues above, an evidentiary hearing is necessary with respect to the issues raised in Application 07-05-013.
3. Based on the above, an evidentiary hearing is not necessary on the other nine applications subject to this consolidated proceeding.
4. The issues to be addressed and ongoing schedule for this proceeding are set forth in Sections 7 and 9 of this Scoping Memo, unless subsequently modified by the assigned Commissioner or Administrative Law Judge (ALJ).
5. ALJ Kenneth Koss is the presiding officer in this proceeding.
6. The service list for this proceeding is attached to this ruling.
7. *Ex parte* communications are subject to the restrictions set forth in Rule 8.2, and the reporting requirements in Rule 8.3, of the Commission's Rules of Practice and Procedure.

Dated October 16, 2007, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon  
Assigned Commissioner

### **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 (attached as Appendix A) I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 16, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid