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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)

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

**AMENDED SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER DETERMINING
THE FURTHER SCOPE AND PROCEDURAL SCHEDULE**

1. Summary

This Amended Scoping Memo and Ruling (Scoping Memo) sets forth the ongoing scope, procedural schedule and related issues to be addressed to facilitate the further processing of this consolidated proceeding.

2. Background

The Exposition Metro Line Construction Authority (Expo Authority) filed the 10 subject applications for authority to construct a series of 38 rail crossings along the new Exposition Boulevard Corridor Light Rail Transit Line, in Los Angeles County. The initial Scoping Memo in this proceeding was issued in October, 2007, and Interim Decision (D.) 07-12-029 authorized the construction of 36 of the 38 crossings. D.07-12-029 also directed that the proceeding remain open to further address the two crossings not authorized by the decision, at Farmdale Ave. and Harvard Blvd. (requested in Application (A.) 07-05-013 and A.06-12-020, respectively). Both crossings are located in the City of Los Angeles, immediately adjacent to school sites.¹

Today's Amended Scoping Memo addresses the ongoing procedural schedule and scope related to these two crossings.

¹ Susan Miller Dorsey (Dorsey) High School is adjacent to the proposed Farmdale Ave. crossing; and the James A. Foshay (Foshay) Learning Center is adjacent to the Harvard Blvd. pedestrian tunnel crossing, an existing undercrossing of Exposition Blvd.

3. Procedural History

The following procedural events have occurred in this proceeding since the issuance of D.07-12-029:

Date (2008)	Event
March 12	Prehearing Conference (PHC) - Los Angeles, California
March 28	Supplemental information filed by Expo Authority regarding the Farmdale Ave. and Harvard Blvd. crossings, Los Angeles, California.
April 18	Comments to supplemental information by other parties.
April 22	Petition for Modification of D.07-12-029 filed by the Los Angeles Unified School District (LAUSD).
April 23-30	Parties telephonic meet/Confer sessions.
May 8	Workshop - Los Angeles, California
May 9	PHC - telephonic
June 5	Administrative Law Judge's (ALJ) ruling regarding service and scope of Expo Authority prepared testimony, and status of the parties.
June 6 ²	Prepared testimony served by Expo Authority regarding Farmdale Ave. and Harvard Blvd. crossings, Los Angeles, California.

4. Scope and Issues to be Addressed

Expo Authority currently proposes to construct an at-grade crossing at Farmdale Ave. for both vehicles and pedestrians, and a pedestrian-only grade separated tunnel crossing at Harvard Blvd. At the March 12, 2008 PHC, alternate design options for both crossings were discussed, and as a result the assigned ALJ directed Expo Authority to file supplemental information analyzing these

² Expo Authority was granted permission by the assigned ALJ to serve a portion of its testimony on June 11, 2008.

other options. Expo Authority timely filed this supplemental information on March 28, 2008.

All parties to the proceeding participated in the PHC held on May 9, 2008. The parties are: applicant Expo Authority, United Community Associations, Inc. (UCA), protestant; Neighbors for Smart Rail (NFSR), respondent to A.07-05-013; LAUSD, interested party; and, staff of the Commission's Consumer Protection and Safety Division (CPSD). An ongoing procedural schedule was developed at the PHC, and the assigned ALJ directed Expo Authority to include in its prepared testimony, in addition to its proposed crossing designs for Farmdale Ave. and Harvard Blvd., Los Angeles, California, an analysis of the following design options:

4.1. Regarding Farmdale Ave.

Expo Authority shall analyze the following two options: (1) a fully grade-separated light-rail aerial overcrossing, leaving Farmdale Ave. open to both vehicles and pedestrians; and (2) a grade-separated pedestrian overcrossing (pedestrian bridge), with Farmdale Ave. closed to vehicle traffic.

Expo Authority also was directed to include a discussion on the types of crossing warning devices and practicability of a grade separation at Farmdale Ave. In determining practicability, the Commission looks to the following issues:³

1. A demonstration of 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;

³ Described in D.03-12-018, D.07-03-027, and other decisions.

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.

Expo Authority served its testimony regarding the above issues, and also provided an analysis of two additional options: a pedestrian bridge, with Farmdale Ave. open to vehicular traffic and a fully grade-separated light-rail underground crossing.

4.2. Regarding Harvard Blvd.

As an option to its proposed pedestrian tunnel, Expo Authority also shall analyze a grade-separated pedestrian bridge at Harvard Blvd.

4.3. Table of Design Options

In its prepared testimony, Expo Authority provided information from six different witnesses with respect to the proposed design and design options for each crossing. This testimony addressed such issues as: the identification of any necessary additional environmental review, including areas of potential environmental impact (*e.g.*, visual, historic); the estimated additional construction costs (beyond the cost of the project as currently proposed); and the estimated additional cost and time necessary for completion of construction.

Having this information combined and presented in table or chart form would provide a more-readily-available format for analysis and comparison of the design options. To that extent, Expo Authority is directed to prepare in table or chart form information and/or data from its prepared testimony outlining the

various design options for both of the proposed crossings, and complete service of this document by June 30, 2008.

Other parties serving prepared testimony also shall consider including a similar table or chart if evidence is being offered regarding crossing design comparisons.

4.4. Summary of Scope

The above issues shall be included in the ongoing scope of this proceeding. Discussion at the workshop and PHCs showed that issues of material fact remain in dispute between the parties regarding the proposed crossings at Farmdale Ave. and Harvard Blvd., such that scheduling an evidentiary hearing (EH) is necessary.

5. Evidentiary Hearing

Expo Authority has the burden of proving that its proposed crossings at Farmdale Ave. and Harvard Blvd. meet the Commission's standards (including the Commission's Rules of Practice and Procedure, and Pub. Util. Code § 99152). At the EH, we expect evidence to include a discussion of the issues outlined above. The primary issues to be addressed in the hearing shall be the proposed design and safety of each crossing. The weight accorded to each will vary, depending on our evaluation of the overall presentation.

The applicant bears the burden of proving safety, rather than the protestant proving unsafe conditions, and the safety of any proposed crossing must be convincingly shown. We expect evidence on future pedestrian and vehicle traffic, the protective measures to be employed, the sight lines for trains and vehicles, the speed of trains and vehicles at the crossings, the number of train movements and length of trains, the ease of evasion of crossing protection

by vehicles and pedestrians, the special needs of student populations, and any other factors peculiar to each crossing.

As noted in earlier rulings, CPSD is participating in this proceeding in an advisory role. If found necessary, however, CPSD should be prepared to address its recommendations at the hearing, and any related conditions, with respect to the practicability of an at-grade crossing at Farmdale Ave.

6. Issues Outside the Scope of Proceeding

The initial Scoping Memo in this proceeding issued last October, and D.07-12-029, addressed several issues outside the scope of this proceeding, not directly related to the rail crossing safety oversight responsibilities of the Commission, and other transportation matters with no link to the proposed crossings. These issues included: the planning, funding and forecasting strategies of the Los Angeles County Metropolitan Transportation Authority; the general transportation policy intentions of the state legislature; the cost and benefits of bus and rail operations; auto and rail traffic patterns away from the crossing sites and/or on other unrelated rail or highway systems; and, federal transportation funding mechanisms related to the overall project. These issues remain outside the scope, and any similar issues not directly related to the safety of the proposed crossings at Farmdale Ave. and Harvard Blvd. also shall be considered outside the scope of this proceeding.

As noted above, D.07-12-029 authorized construction of 36 of the 38 proposed crossings requested by Expo Authority. The ongoing scope of this proceeding, and the related EH, shall not include or revisit D.07-12-029 with respect to 36 crossings authorized therein, unless otherwise directed by the Commission.

7. Petition for Modification of D.07-12-029

One of the 36 crossings authorized in D.07-12-029 is an at-grade crossing at Western Ave. (requested in A.07-02-007). This crossing is approximately 600 feet west of the proposed Harvard Blvd. crossing and the Foshay Learning Center.

On April 22, 2008, pursuant to Rule 16.4, LAUSD filed a Petition for Modification of D.07-12-029 requesting the Commission to reconsider authorization of the Western Ave. crossing. In its petition, LAUSD asks the Commission to rescind, in effect, that authorization and instead include the Western Ave. crossing in the ongoing procedural schedule related to the Farmdale Ave. and Harvard Blvd. crossings.

Expo Authority filed a response opposing the petition on May 16, and LAUSD filed a reply on June 2, 2008.⁴ To date, the Commission has not acted on the petition. The Commission may grant the petition, deny the petition, or chose not to act on the petition. 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.

The scope of this proceeding presently shall not include a review of the authorized Western Ave. crossing. This matter will be further addressed, however, should the Commission grant LAUSD's petition.

8. Public Workshop

A Public Participation Hearing was held at Dorsey High School on November 5, 2007 regarding the proposed crossing at Farmdale Ave. A public workshop will be held at the Foshay Learning Center on July 1, 2008, as detailed

⁴ The response and reply were timely and filed pursuant to Rule 16.4.

in the schedule below, to discuss the design options regarding the proposed crossing at Harvard Blvd., and to allow for the public to comment. The issues to be addressed at the July 1 public workshop shall be limited to the crossing design and potential use of the Harvard Blvd. pedestrian crossing. Expo Authority is directed to coordinate and schedule a public workshop at the Foshay Learning Center pursuant to the schedule herein.

9. Schedule

The ongoing procedural schedule is outlined below. The assigned Commissioner or ALJ may modify the schedule as necessary:

Event	Date (All 2008)
Expo Authority to serve table of design options	June 30
Public Workshop Foshay Learning Center - Auditorium 3751 So Harvard Blvd. Los Angeles, CA 90018	July 2 6:30 p.m. – 9:00 p.m.
Mediation/Settlement Conference Los Angeles (see discussion below in 9.1)	During week of July 21
UCA and NFSR to serve prepared testimony	July 30
LAUSD to serve prepared testimony; Discovery Period Ends	August 6
EH Commission's Courtroom State Office Building 505 Van Ness Ave. San Francisco, CA 94102 (see discussion below in 9.2)	August 11, at 10:00 a.m. (through August 15, if necessary).
Concurrent Opening Briefs	September 5
Concurrent Reply Briefs	September 19
Proposed Decision (PD)	October 6
Comments on PD	October 27
Reply Comments	November 3
Commission Decision	November 6

9.1. Settlement Conference

The parties are encouraged to settle any disputed issues before the EH is held. The mediation conference noted above will be facilitated by a third-party

neutral ALJ, within the established guidelines of the Commission's Alternative Dispute Resolution (ADR) program. Information regarding the ADR program is available on the Commission's website (www.cpuc.ca.gov/PUC/ADR).

The neutral ALJ will contact the parties directly regarding scheduling, location and other details of the mediation conference. In addition to the named parties in this proceeding, the City of Los Angeles Department of Transportation is invited to attend the mediation conference as it is the agency responsible for most/all of the public streets adjacent to the two proposed crossing sites.

Should a settlement or stipulation be reached before the evidentiary hearing, the parties should telephone the assigned ALJ, and notice the service list as soon as possible, but in no event later than August 8, 2008.

9.2. Location of Evidentiary Hearing

The parties were advised by the assigned ALJ at the outset of this proceeding that, to the extent possible, the Commission would hold all in-person procedural events in or near Los Angeles. To date, all such events⁵ have been held in the City of Los Angeles or Culver City. However, due to state budget-related travel constraints, it now is necessary that we schedule the upcoming EH for the Commission's Courtroom in San Francisco.

We will continue to monitor the budget situation, explore other options regarding location of the hearing and testimony of witnesses, and if necessary address this issue further in a subsequent ruling.

⁵ Events include three PHCs, two workshops, one PPH, and one mediation conference.

10. Category of Proceeding and Presiding Officer

D.07-12-029 previously determined this consolidated proceeding is ratesetting, and that Kenneth L. Koss is the assigned ALJ. This proceeding remains categorized as ratesetting, and ALJ Koss continues as the presiding officer.

11. Ex Parte Communications

In ratesetting proceedings such as this, *ex parte* communications normally are subject to the restrictions set forth in Rule 8.2, and the reporting requirements in Rule 8.3. However, a revised Scoping Memo, jointly issued by the assigned Commissioner and ALJ on November 27, 2007, imposed a prohibition on *ex parte* communications in this proceeding, to remain in effect unless otherwise ruled by the assigned ALJ, the assigned Commissioner, or the Commission.

At the May 9, 2008 PHC, Expo Authority requested that the *ex parte* communications prohibition be removed due to the changed nature of the proceeding (the issuance of D.07-12-029, and other procedural determinations having been resolved). UCA objected to this request, and asked that the prohibition remain in place. No other parties commented on this issue.

The *ex parte* communication prohibition, pursuant to the revised Scoping Memo, was put in place to ensure the overall integrity of the record in this proceeding. In order to maintain that integrity, it is ruled here that the *ex parte* prohibition will remain in place.

IT IS RULED that:

1. Based on the issues above, an evidentiary hearing is necessary with respect to the issues raised in Application (A.) 07-05-013, for an at-grade crossing at Farmdale Ave.; and in A.06-12-020, for a grade-separated pedestrian tunnel crossing at Harvard Blvd.

2. The issues to be addressed, and the ongoing schedule and related activities for this proceeding are set forth in this Amended Scoping Memo and Ruling (Scoping Memo), unless subsequently modified by the assigned Commissioner or Administrative Law Judge (ALJ).

3. This proceeding remains categorized as ratesetting, and ALJ Kenneth L. Koss continues as the presiding officer.

4. The prohibition on *ex parte* communications in this proceeding, pursuant to the revised Scoping Memo issued November 27, 2007, as such communications are defined in Article 8 of the Commission's Rules of Practice and Procedure, remains in place.

Dated June 20, 2008, 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 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/ JOYCE TOM

Joyce Tom