



GSH/nd3 10/16/2020

**FILED**  
10/16/20  
10:34 AM

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

Application of DesertXpress Enterprises, LLC dba XpressWest to construct proposed highspeed tracks under the following public road crossings: Harvard Rd. (MP 123.53), ZZYZX Rd. (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37).

Application 20-07-006

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This Scoping Memo and Ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code section 1701.1. and Article 7 of the Commission's Rules of Practice and Procedure.<sup>1</sup>

**1. Procedural Background**

Pursuant to Pub. Util. Code §§ 1201 to 1205, and in accordance with Rule 3.7 of the Commission's Rules, on July 6, 2020, DesertXpress Enterprises, LLC dba XpressWest (DesertXpress) filed an application to construct proposed grade-separated highspeed tracks under four public road crossings at Harvard Rd. (MP 123.53), ZZYZX Rd. (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37) (Application). On August 10, 2020, the

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, available on the Commission's website at:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M164/K610/164610801.PDF>.

Commission's Rail Safety Division filed a response to the application. No other party filed a response, and no party protested the Application.

On September 2, 2020, Administrative Law Judge (ALJ) Daphne Lee issued an e-mail Ruling setting the prehearing conference (PHC) on September 30, 2020 and ordering the parties to meet, confer, and submit a Joint PHC Statement prior to the PHC. The parties timely filed a Joint PHC Statement.

During the PHC, California Department of Transportation moved and was granted party status. The parties were instructed to file comments on the environmental and social impacts from the construction of the grade-separated highspeed tracks under four public road crossings by October 7, 2020, and optional reply comments were due October 12, 2020.

## **2. Issues**

The issues to be determined are:

1. Whether the Application meets all Commission requirements, including those in Rule 3.7 and General Orders 26-D and 176, such that the Commission should grant DesertXpress' application to construct proposed grade-separated highspeed tracks under four public road crossings at Harvard Rd. (MP 123.53), ZZYZX Rd. (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37);
2. Whether DesertXpress' application complied with the California Environmental Quality Act or exempted from the requirements of the California Environmental Quality Act;
3. Whether the Commission should grant the DesertXpress a period of 60 months from the Application approval date to complete the proposed project; and
4. Whether the construction of the proposed grade-separated highspeed tracks under four public road crossings impacts environmental and social justice communities and achieves

any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

### **3. Need for Evidentiary Hearing**

Resolution ALJ 176-3466 preliminarily determined that evidentiary hearing was needed. We find, however, that there are no issues of material disputed fact. Accordingly, evidentiary hearing is not needed.

### **4. Schedule**

The following schedule is adopted here and may be modified by the ALJ as required to promote the efficient and fair resolution of the Application:

<b>EVENT</b>	<b>DATE</b>
Close of Record	Upon the consideration of the environmental document for the underlying project and determination that no further information or evidence is needed to adequately inform and evaluate the issues in this proceeding
Proposed Decision	Targeted February 2021

The proceeding will stand submitted upon the consideration of the environmental document for the underlying project and determination that no further information or evidence is needed to adequately inform and evaluate the issues in this proceeding and the ALJ issue a ruling closing the record. The ALJ may adjust the above proceeding schedule and may require further evidence or argument, if necessary. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code § 1701.5.

### **5. Category of Proceeding and Ex Parte Restrictions**

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding under Resolution ALJ 176-3466. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

## **6. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

## **7. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TYT), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **8. Filing, Service, and Service List**

The official service list has been created and is on the Commission’s website and on the docket card of this proceeding. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website and docket card.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents. When serving documents on Commissioners or their personal advisors, whether or not they are

on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

### **9. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

### **10. Assignment of Proceeding**

Commissioner Genevieve Shiroma is the assigned Commissioner and Daphne Lee is the assigned ALJ for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is not needed.

4. The category of the proceeding is ratesetting.

This order is effective today.

Dated October 16, 2020, at San Francisco, California.

/s/ GENEVIEVE SHIROMA  
Commissioner Genevieve Shiroma  
Assigned Commissioner