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

Application of the San Joaquin Regional Rail Commission for authority to install two Union Pacific Railroad (UP) Fresno Subdivision Main Line 1 and 2 tracks at Mile Post 84.23, proposed CPUC Number, 001BEL-84.23-A, USDOT 980277A, and Altamont Commuter Express (ACE) track crossing under Crosstown Freeway also known as State Route 4, in the City of Stockton, San Joaquin County, California.

Application 24-04-014

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

This Scoping Memo and Ruling (Scoping Memo) sets forth the category, issues to be addressed, and schedule of the above captioned proceeding pursuant to Public Utilities Code section 1701.1 and Article 7 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules).<sup>1</sup>

**1. Background**

Pursuant to Public Utilities (Pub. Util.) Code Section 99152 and Commission Rules 3.7, 3.9, and 3.11, on April 26, 2024, the San Joaquin Regional Rail Commission (SJRRRC) filed Application (A.) 24-04-014 (Application), with its incorporated Exhibits A through G-15, seeking authority to construct one new grade separated highway-rail crossing at State Route 4 in the City of Stockton, County of San Joaquin at MP 84.23 of the Union Pacific Railroad Fresno Subdivision, more fully described as:

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<sup>1</sup> California Code of Regulations, Title 20, Div. 1, Ch. 1.

[T]wo Union Pacific Railroad Northern California Service Unit, Fresno Subdivision Main Line #1 and #2 tracks at Mile Post 84.23 and Altamont Commuter Express (ACE) track across and under Crosstown Freeway [also known as State Route 4].<sup>2</sup>

The Application was accompanied by a Commission Rule 2.9 *Request For Expedited Schedule* (Rule 2.9 Request), with SJRRC asserting a need to “expeditiously” resolve financial matters that place at risk Trade Corridor Enhancement Program (TCEP) funding, and Better Utilizing Investments to Leverage Development (BUILD) funding, to avoid prospective ratepayer harm.<sup>3</sup>

The crossing proposed in this A.24-04-014 proceeding are part of Applicant SJRRC’s Stockton Diamond Grade Separation Project, a project to construct a grade separation of the BNSF and Union Pacific rail lines at the Stockton Diamond<sup>4</sup> in Stockton, California to reduce rail congestion and allow passenger and freight rail traffic to flow uninterrupted through the crossing.<sup>5</sup>

Commissioner Matthew Baker and Administrative Law Judge (ALJ) Andrea D. McGary were assigned to this A.24-04-014 proceeding on May 10, 2024.

On May 28, 2024, *Administrative Law Judge’s Ruling Setting Remote Prehearing Conference & Prehearing Conference Statement Deadline* was issued setting a prehearing conference (PHC) for June 11, 2024 (3:15 p.m.).

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<sup>2</sup> See Application at 3.

<sup>3</sup> See Application at 6 and Exhibit F. See also Commission Rule 2.9(c).

<sup>4</sup> The BNSF Railway Stockton Subdivision and the Union Pacific Railroad Fresno Subdivision consist of two main tracks each, which intersect each other at a level, at-grade crossing known as the “Stockton Diamond.” Application at 7 and Exhibit G-01 (*Final Environmental Impact Report Volume 1 (Executive Summary through Chapter 3.6)*, Section 1.2 at 1-2, June 2021).

<sup>5</sup> Application at 5-6.; Exhibits B (*Project Area Map*) and C (*Vicinity Map*).

The Commission's Rail Safety Division (RSD) filed a Response to the Application on May 29, 2024.<sup>6</sup> A PHC was held on June 11, 2024, to discuss the issues of law and fact, the need for hearing, and schedule for resolving this matter.

After considering the Application and the proceeding record, the Commission has determined the issues and schedule of the proceeding to be as set forth in this Scoping Memo.

## **2. Issues**

The issues to be determined or otherwise considered are:

1. Does the Application meet all of the Commission's requirements, including Rules 3.11, 3.9 and 3.7, for the Commission to grant San Joaquin Regional Rail Commission authority to construct one new grade separated highway-rail crossing at State Route 4 a/k/a Crosstown Freeway in the City of Stockton, County of San Joaquin at MP 84.23 of the Union Pacific Railroad Fresno Subdivision;
2. Should the Commission grant the authority requested in A.24-04-014;
3. Has the Applicant complied with the California Environmental Quality Act;
4. Should the Commission grant the Applicant a period of three (3) years from the Application approval date to complete the proposed project; and
5. Does the Application align with or promote the achievement of the nine goals of the Commission's Environmental and Social Justice Action Plan?

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<sup>6</sup> *Response of The Rail Safety Division To The Application The San Joaquin Regional Rail Commission To Construct One Grade Separated Highway-Rail Crossing In The City of Stockton* (May 29, 2024 RSD Response).

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

Based on review of the record, A.24-04-014 is unopposed and there are no material disputed facts. Applicant SJRRC and Respondent RSD agree that there are no known issues of material disputed fact requiring an evidentiary hearing.<sup>7</sup> Accordingly, no evidentiary hearing is needed.

### **4. Schedule**

The proceeding will stand submitted upon consideration of the environmental document(s) for the underlying project and determination that no further information or evidence is needed to adequately inform and evaluate the issues in the instant proceeding. At such time, the ALJ will issue a ruling closing the record of the proceeding. Applicant's Rule 2.9 Request is under review. The ALJ may adjust the proceeding schedule and may require further evidence or argument if necessary. Based on the projected schedule, the proceeding is expected to be resolved within eighteen (18) months as required by Public Utilities Code section 1701.5.

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

This A.24-04-014 proceeding was preliminarily categorized as ratesetting.<sup>8</sup> No objections to the category were made at the June 11, 2024 PHC. This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Rules.

### **6. Public Outreach**

Pursuant to Pub. Util. Code Section 1711(a), we hereby report that the Commission sought the participation of those likely to be affected by this matter

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<sup>7</sup> Rail Safety Division and San Joaquin Regional Rail Commission Joint Pre-Hearing Conference Statement (June 6, 2024).

<sup>8</sup> Resolution ALJ-176-3545 (May 9, 2024).

by highlighting the project in a newsletter distributed by the CPUC's External Affairs Division to local governments and community based organizations.

## **7. Intervenor Compensation**

Pursuant to Pub. Util. Code Section 1804(a)(1), an intervenor who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by July 12, 2024, or 30 days after the prehearing conference.

## **8. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public.<sup>9</sup> 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.

## **9. 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 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

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

The official Service List has been created and is on the Commission's website. 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<sup>10</sup>.

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<sup>9</sup> Pub. Util Code Section 1701.1(g).

<sup>10</sup> The form to request additions and changes to the Service List may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

When serving any document, each party must ensure that it is using the current official Service List on the Commission's website.

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).

The Commission encourages those who seek information-only status on the Service List to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

#### **11. Receiving Electronic Service from the Commission**

Parties and other persons on the Service List are advised that it is the responsibility of each person or entity on the Service List for Commission proceedings to ensure their ability to receive emails from the Commission. Please add "@cpuc.ca.gov" to your email safe sender list and update your email

screening practices, settings and filters to ensure receipt of emails from the Commission.

**12. Assignment of Proceeding**

Commissioner Matthew Baker is the assigned Commissioner and Andrea D. McGary is the assigned Administrative Law Judge.

**IT IS RULED** that:

1. The scope of the proceeding for Application (A.) 24-04-014 is described above and is adopted.
2. The schedule of A.24-04-014 is set forth above and is adopted.
3. Evidentiary hearings are not needed.
4. The category of A.24-04-014 is ratesetting.
5. The presiding officer is Administrative Law Judge Andrea D. McGary.
6. The assigned Commissioner or assigned Administrative Law Judge may modify the schedule, as required, to promote efficient and fair resolution of the proceeding.

This order is effective today.

Dated July 1, 2024, at San Francisco, California.

/s/ MATTHEW BAKER

Matthew Baker  
Assigned Commissioner