

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

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July 7, 2025

TO PARTIES OF RECORD IN CASE 21-11-016:

This proceeding was filed on November 16, 2021, and is assigned to Commissioner John Reynolds and Administrative Law Judge (ALJ) Hazlyn Fortune. This is the decision of the Presiding Officer, ALJ Fortune.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (*i.e.*, the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See*, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ W. ANTHONY COLBERT for
Michelle Cooke
Chief Administrative Law Judge

MLC:jnf
Attachment

ALJ/POD-HCF/jnf

Decision **PRESIDING OFFICER'S DECISION OF ALJ FORTUNE**
(Mailed 7/7/2025)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dennis Reis and Deborah Reis,

Complainants,

vs.

Sonoma Marin Area Rail Transit
District (SMART),

Defendant.

Case 21-11-016

**PRESIDING OFFICER'S DECISION DISMISSING
COMPLAINT AND SETTING REPORTING REQUIREMENTS**

Summary

This decision dismisses the complaint against the Sonoma Marin Area Rail Transit District (SMART) filed by Mr. and Mrs. Dennis Reis (the Reises) regarding the construction of a private rail crossing.

The decision also directs SMART and the Reises to comply with the reporting requirements to staff at the California Public Utilities Commission's (Commission's) Rail Safety Division. This proceeding is closed.

1. Background

On October 26, 2021, Mr. and Mrs. Dennis Reis (the Reises or Complainants) initiated a Complaint against the Sonoma Marin Area Rail Transit District (SMART or Defendant). The Complaint was filed at the California Public Utilities Commission (Commission) on November 16, 2021. The Complaint affirmed the need for a private rail crossing between two land parcels (Parcel A and Parcel B) that the Complainants' currently own. Moreover, the Complaint asserted that pursuant to California Public Utilities (Pub. Util.) Code 7537, SMART had a statutory duty to construct a private crossing over its right-of-way and between Complainants' Parcel A and Parcel B at no cost to the Complainants.

1.1. Procedural Background

On November 16, 2021, the Reises filed a complaint against SMART (Complaint). On December 2, 2021, the Commission issued an Instruction to Answer and SMART filed its answer on January 3, 2022. On January 11, 2022, the Commission noticed a prehearing conference (PHC) for this Complaint. The PHC was held on January 28, 2022.

On February 23, 2022, the Commission issued a scoping memo for the Complaint directing the Complainants and the Defendant to respond to questions included in the scoping memo. The Complainants and the Defendant filed responses to the questions on March 23, 2022. On May 18, 2022, the assigned Administrative Law Judge (ALJ) issued a ruling setting a status conference for June 15, 2022. The Defendant and Complainants filed statements prior to the status conference on June 9, 2022, and June 13, 2022, respectively. On June 30, 2022, SMART filed its response to a question posed at the status conference and filed a motion to dismiss the Complaint. On July 8, 2022, the ALJ

issued a ruling directing SMART to file an application for construction of a private crossing. On July 29, 2022, SMART filed a motion to vacate the ALJ's Ruling. The Complainants filed a response to the motion to vacate on August 12, 2022. On August 16, 2022, the assigned ALJ issued a ruling granting SMART the ability to comment on the Complainants' August 12, 2022, response. On August 22, 2022, SMART filed a reply to the Complainants' August 12, 2022, response. On August 29, 2022, the Commission noticed a PHC on September 9, 2022. On August 31, 2022, the assigned ALJ issued a ruling setting a PHC for the September 9, 2022.

On January 31, 2023, the assigned ALJ set a status conference for February 23, 2023. During the status conference the ALJ introduced a proposal to implement a five-step process for the construction of a private railroad crossing. On March 22, 2023, the assigned ALJ issued a ruling vacating the July 8, 2022, Ruling that had directed SMART to file an application to investigate whether a private railroad crossing to connect the Reis's properties was feasible. The March 22nd Ruling directed parties to move forward in implementing SMART's internal private railroad crossing application process. The ruling also directed parties to file joint reports to track their progress. On May 1, 2023, parties filed their first report announcing the completion of steps one (application) and step 2 (preliminary analysis) and indicating that parties were moving forward to step 3 (diagnostic review). On August 16, 2023, the assigned ALJ issued a ruling requiring parties to provide a status report on or before September 15, 2023. Parties timely filed their second joint report on August 29, 2023, announcing that step 3 had been completed.

On October 12, 2023, the assigned ALJ issued an order extending the statutory deadline for the proceeding to December 31, 2024, to allow time for

parties to complete all steps for the crossing. On December 14, 2023, SMART and the Reises filed a joint report where SMART reaffirmed that it had completed Step 3. SMART stated in the December 14, 2023 report that the Reises would need to provide a written request with their proposed crossing design and location, evidence of obtaining commercial power, and environmental compliance assurances among other items. On April 23, 2024, the assigned ALJ issued a ruling directing parties to file a status report for the crossing on or before June 15, 2024. On June 14, 2024, parties timely filed a joint report indicating that the Reises were working with third parties, including Ducks Unlimited, Inc., on a marsh rehabilitation and land acquisition project.

On August 8, 2024, the assigned ALJ issued a ruling with questions about the June 14, 2024, joint report. On September 9, 2024, the Reises and SMART responded to the questions from the August 8th ruling. On September 16, 2024 the assigned ALJ issued a ruling requesting additional information regarding their response to the August 8th ruling and directed the Reises to address specific questions. On December 19, 2024, the Commission adopted a decision extending the statutory deadline for the proceeding to June 30, 2025. On February 26, 2025, the assigned ALJ issued an email ruling and on March 3, 2025, a formal, ruling noticing a status conference on March 7, 2025. On May 2, 2025, a transcript of the March 7, 2025 status conference was filed in the record of the proceeding. On June 12, 2025, the Commission adopted Decision 25-06-020 extending the statutory deadline for this proceeding to September 1, 2025.

2. Issues Before the Commission

The Complaint requests the following relief:¹

1. Determining that SMART has a statutory duty pursuant to Cal. Pub. Util. Code 7537 to construct a private crossing over its right-of-way and between Complainants' Parcel A and Parcel B.
2. Determining the necessity of a private crossing between Complainants' Parcel A and Parcel B.
3. Determining the place, manner, and condition under which SMART shall construct and maintain the crossing, and the cost and expense thereof.
4. Whether to direct SMART to construct and maintain a private crossing at a reasonably convenient location between Complainants' Parcel A and Parcel B at no cost to Complainants.

3. Discussion and Analysis

3.1. Issue 1: Statutory Applicability

The Complainants assert in their filing that pursuant to California Pub. Util. Code 7537, SMART had a statutory duty to construct a private crossing over its right-of-way and between Complainants' Parcel A and Parcel B at no cost to the Complainants. The Complainants' interpretation of Pub. Util. Code 7537 is in error. The statute does not confer an obligation for SMART to construct, pay for and maintain a private crossing. To the contrary, the statute makes known the authority of the Commission to determine the necessity for a crossing and if found necessary, sets the conditions and apportion the costs for said crossing.

In their Answer to the complaint, SMART point out that, "Code section 7537 must be harmonized with California Constitution Article 16, section

¹ Dennis Reis and Deborah Reis (Complainants) vs. Sonoma Marin Area Rail Transit District (SMART), November 16, 20221 at 3.

6. The California Constitution prohibits the appropriation of public funds for private purposes. Hence, if the Commission determines that a private or farm crossing over SMART's property, for the sole benefit of Complainants is necessary, the Commission should not grant such without adequate compensation to SMART."²

The Commission agrees with SMART's perspective and finds that SMART does not have a statutory duty to construct a private crossing over the right-of-way between Complainants Parcel A and Parcel B.

3.2. Issue 2: Necessity for a Private Crossing

The Commission authority over railroad crossings is to ensure public safety and access. As SMART points out in its Answer to the complaint, "By definition, a private crossing does not serve the public it serves only to support the private activity of the users and is of no use to the railroad in serving the public."³

The information provided in this Complaint did not give the Commission staff with adequate detail to determine the necessity for the requested private crossing. The Commission attempted to get more detailed information by directing SMART to file an application; however, this approach was rejected. Therefore, the Commission had no information to support the necessity for this crossing.

² Verified Answer of Sonoma-Marín Area Rail Transit District to Complaint of Dennis Reis and Deborah Reis, January 3, 2022, at 4 -5.

³ *Id.*, at 5.

3.3. Issue 3: Location for a Private Crossing

Because the Commission did not have sufficient information to determine the necessity for the crossing in this Complaint, it therefore has no role in in determining the location for this private crossing.

3.4. Issue 4: Maintenance of a Private Crossing

Because the Commission has no role in in determining the “necessity” and location for this private crossing, it also does not have a role in directing how and by whom, a private crossing should be maintained.

4. Conclusion

The Commission held the first series of hearing to address the private crossing complaint from Mr. and Mrs. Reis and SMART over three years ago. The proceeding has been extended multiple times; till March 31, 2023, then till October 2, 2023, till December 31, 2024, till June 30, 2025 and currently till September 1, 2025.

After the initial pre-hearing conference for this proceeding the Commission considered directing SMART to file an application for this proposed private crossing, in a July 8, 2022 ruling. The thinking behind this approach was that SMART had better legal standing to submit an application, and that the application process would engage Commission staff in a transparent process open for review by the public. SMART objected to this approach and filed a motion to vacate the ruling on July 29, 2022.

Earlier in 2022, on June 13, 2022, the Reises had filed a PHC statement with exhibits. Included in the exhibits accompanying the PHC statement was an internal SMART developed five-stage private crossing application process. The stages include: 1) Application, 2) Preliminary Analysis, 3) Diagnostic Review, 4) License Agreement & Issuance of License, and 5) Construction & Opening. At

a status conference on September 9, 2022, SMART's engineer presented information about its internal private crossing application process.

Since the Commission could not evaluate this crossing from the information provided in the Complaint and SMART rejected the Commission's direction to file an application for this private rail crossing, the Commission decided to allow parties to proceed with SMART's internally developed private application process. After a February 23, 2023 status conference the parties were directed to file status reports to gauge their progress. The Commission vacated its July 8, 2022, ruling on March 22, 2023.

Five status reports have been filed so far, from May 1, 2023 to September 9, 2024, to monitor the five-step process for SMART's internal private rail crossing application process. The Commission's Rail Safety Division staff were involved in site visits for step 3. Step 4 (licensing agreement) and Step 5 (construction and opening) are all that remain to resolve this Complaint.

At the most recent status conference on March 7, 2025, substantial signs of progress have been made towards creating conditions to construct the private crossing in this Complaint. For example, during the status conference a representative for the Reises reported that, "...the Reises are involved with kind of finalizing a deal with the Sonoma Land Trust to acquire the Reises' land easterly of the railroad corridor ..." ⁴ According to the Reises' representative, "that acquisition was prompted by Ducks Unlimited, Inc. who is desiring to use the east parcel as a very substantial wetlands rehabilitation process to account for rising sea levels going forward." ⁵ The Reises' representative further explained

⁴ Reporter's Transcript volume 2, page 39: line 20 – 22.

⁵ Reporter's Transcript volume 2, page 39: line 24 – 25 and page 40: line 1.

that, “the Sonoma County Agricultural Preservation and Open Space District (Open Space), holds a conservation easement over the east parcel.”⁶ Reportedly, “... that prompted the Reises to talk with Open Space because they would have to approve an access easement (for the east parcel), that negotiation took a while because Open Space because Open Space has a board that has to approve any sort of thing that’s placed on there and the also Sonoma Land Trust input was necessary because they would be acquiring the parcel.”⁷ In another sign of progress, “Open Space approved an access easement ... a permanent access easement via this existing ranch road, both for SMART, as far as being formalized in a permanent agreement, and also for Sonoma Land Trust. They would use the same access to get to the crossing site.”⁸ Additionally, “... the final crossing design has been submitted to SMART, ... we are really close to the finish line, at least from the Reises’ perspective, on outstanding designs and implementation and access”⁹

Taken together, these developments indicate that the parties are making clear and substantial progress toward the construction of this private crossing and no longer need the Commission involved except to ensure the public safety. However, given the long history of this particular private rail crossing, it is prudent to include reporting requirements to ensure that Commission’s Rail Safety Division staff continue to be involved in ensuring the public safety of the crossing before and after construction. SMART and the Reises shall:

⁶ Reporter’s Transcript volume 2, page 39: line 24 – 25 and page 40: line 1.

⁷ Reporter’s Transcript volume 2, page 39: line 24 – 25 and page 40: line 1.

⁸ Reporter’s Transcript volume 2, page 41: line 7 – 11.

⁹ Reporter’s Transcript volume 2, page 47: line 7 -11.

1. The Reises must send the CPUC Rail Safety Division staff the full detailed design, a seven-page survey location with specifications, safety specifications, etc. that was submitted to SMART and referred to in Reporter's Transcript volume 2, page 53: line 1 - 10.
2. The Reises must send the CPUC Rail Safety Division staff the full detailed design, a seven-page survey location with specifications, safety specifications, etc. that was submitted to SMART and referred to in Reporter's Transcript volume 2, page 53: line 1 - 10.
3. SMART and the Reise will jointly submit final crossing design plans, and all relevant information for the crossing, such as frequency of use etc. to the Commission's Rail Safety Division staff, as soon as they are available.
4. SMART must provide ongoing reporting to the Commission's Rail Safety Division staff about any incidents or near misses at the crossing, on an annual basis, after it goes into service.

5. Appeal or Review of Presiding Officer's Decision

The presiding officer's decision in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code. Pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure, any party may file an appeal of the presiding officer's decision within 30 days of the date the decision is served. In addition, any Commissioner may request review of the presiding officer's decision by filing a request for review within 30 days of the date the decision is served.

6. Assignment of Proceeding.

John Reynolds is the assigned Commissioner and Hazlyn Fortune is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Pursuant to Pub. Util. Code 7537, the Commission has the authority to determine the necessity for any crossing and the pace, manner, and conditions under which the crossing shall be constructed and maintained.

2. On November 16, 2021, the Reises filed a complaint against SMART.

3. On July 8, 2022, the assigned ALJ issued a ruling directing SMART to file an application for a private crossing.

4. On March 22, 2023, the assigned ALJ issued a ruling vacating the July 8, 2022 ruling that directed SMART to file an application for a private crossing.

5. On May 1, 2023, parties file a first joint status report on the SMART internal private crossing application process..

6. On August 29, 2023, parties file a first joint status report on the SMART internal private crossing application process.

7. On December 13, 2023, the Reises file a report responding to questions from the assigned ALJ, about the SMART internal private crossing application process.

8. On June 14, 2024, parties file a first joint status report on the SMART internal private crossing application process.

9. On September 9, 2024, parties file a first joint status report on the SMART internal private crossing application process.

10. On March 7, 2025, the assigned ALJ held a status conference to discuss progress toward a private crossing using SMART's internal private crossing application process.

Conclusions of Law

1. The Commission has authority to ensure the safety of all public and private rail crossings in California pursuant to Pub. Util. Code 7537.

2. SMART's internal private crossing application process is a reasonable alternative to an application for a private crossing filed at the Commission.

3. SMART and the Reises have made substantial progress toward finalizing the construction of a private crossing.

4. It is reasonable for SMART and the Reises to continue to work cooperatively to complete all activities needed for a private crossing.

5. It is reasonable for the Commission to require reporting to support public safety.

O R D E R

IT IS ORDERED that:

1. Dennis Reis and Deborah Reis shall send the California Public Utilities Commission's Rail Safety Division staff the full detailed design, a seven-page survey location with specifications, safety specifications, etc. that was submitted to Sonoma Marin Area Rail Transit District and referred to in Reporter's Transcript volume 2, page 53: line 1 - 10.

2. Sonoma Marin Area Rail Transit District and Dennis Reis and Deborah Reis (the Reises) will jointly submit final crossing design plans, and all relevant information for the crossing, such as frequency of use etc. to the California Public Utilities Commission's Rail Safety Division staff, as soon as they are available.

3. The Commission's Rail Safety Division staff shall review and approve the crossing design plans, including the addition of any modifications, such as active warning devices, that they see fit to improve safety. No construction for this private crossing shall take place without Commission Rail Safety Division staff crossing design plans approval.

4. Sonoma Marin Area Rail Transit District shall on an annual basis, provide ongoing reporting to the California Public Utilities Commission's Rail Safety

Division staff about any incidents or near misses at the crossing after it goes into service.

5. Complaint 21-11-016 is dismissed.
6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California