

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**06-23-10
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June, 23, 2010

Agenda ID #9582
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 06-12-005 ET AL.

This is the proposed decision of Administrative Law Judge (ALJ) Maribeth A. Bushey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Maribeth A. Bushey at mab@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ BUSHEY** (Mailed 6/23/2010)

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

FINAL DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

In this decision, we approve a settlement agreement among the applicant, Exposition Metro Line Construction Authority (Expo), protestants Los Angeles Unified School District and Los Angeles County Metropolitan Transportation Authority that provides for a station at Farmdale Avenue on the Exposition

Boulevard Corridor Light Rail Transit Line, in Los Angeles County. The new station will be adjacent to Susan Miller Dorsey (Dorsey) High School and will allow for at-grade vehicular and pedestrian crossings with extensive safety procedures and mechanisms.

2. Background

In Interim Decision (D.) 07-12-029, the Commission authorized the construction of 36 of the 38 crossings proposed by the applicant. On February 20, 2009, the Commission addressed the two remaining crossings in D.09-02-031 and found that it is practicable to construct a grade-separated pedestrian crossing at Farmdale Avenue on the Exposition Boulevard Corridor Light Rail Transit Line, in Los Angeles County. That decision also authorized the applicant, Exposition Metro Line Construction Authority (Expo) to file amendments or a new application consistent with the February decision for the Farmdale crossing.

On July 29, 2009, Expo filed and served its amendment to Application 07-05-013. In its amended application, Expo Authority offered four alternatives to its original at-grade crossing at Farmdale Avenue for both vehicles and pedestrians:

- A. Grade-separated pedestrian overcrossing with Farmdale Avenue closed to vehicular traffic.
- B. At-grade pedestrian and vehicular crossing, subject to a permanent "Stop and Proceed" order for all light rail vehicles.
- C. At-grade pedestrian and vehicular crossing with a station including platforms east and west of Farmdale Avenue which would require all light rail vehicles to come to a full stop at the crossing.

- D. Alternative B as a temporary measure pending construction of station as described in Alternative C.

Protests were filed by the United Community Associations, Inc., jointly with Neighbors for Smart Rail, and the Los Angeles Unified School District. The United Community Associations, Inc. and Neighbors for Smart Rail also moved to strike alternatives B, C, and D as listed above and contended that the Commission had determined in D.09-02-031 that the Farmdale crossing must be grade-separated.

On September 30, 2009, the assigned Administrative Law Judge (ALJ) convened a prehearing conference. The parties requested an opportunity to enter into settlement negotiations, and subsequently reported to the ALJ that such discussions had been fruitful, with a final agreement anticipated in early 2010. The ALJ also heard oral argument on the motion to strike the non-grade-separated alternatives and ruled that in D.09-02-031 the Commission left the proceeding open to allow Expo to file “any amendments or a new application” and did not limit the alternatives that could be proposed to be grade-separated.

On December 21, 2009, the assigned Commissioner issued an Amended Scoping Memo which addressed the ongoing procedural schedule and scope related to the Farmdale crossing. The ruling set a flexible procedural schedule to accommodate on-going settlement negotiations, but set a hearing date for May 3, 2010, if no settlement agreement had been filed by that date. In the scoping ruling, the Commissioner also ruled on United Community Associations, Inc. and Neighbors for Smart Rail’s motion for reconsideration of the ALJ’s ruling that the Commission’s decision did not preclude non-grade-separated alternatives and upheld the ALJ’s determination.

Accordingly, all four alternatives were determined to be within the amended scope of the proceeding.

On January 22, 2010, Expo moved for an interim decision addressing compliance with environmental review requirements. On April 27, 2010, the Commission issued D.10-04-036 which certified the Addendum to the Final Environmental Impact Statement/Final Environmental Impact Report, which had been certified by the Los Angeles County Metropolitan Transportation Authority in 2005.

On May 3, 2010, the assigned ALJ convened another prehearing conference and Expo reported that a settlement agreement with the Los Angeles Unified School District was imminent. The ALJ set May 12, 2010, as the date for filing the settlement agreement, and on that date Expo and the Los Angeles Unified School District filed and served their joint motion seeking approval of the settlement agreement, with the settlement agreement attached. At the prehearing conference, the ALJ set a schedule for considering the settlement agreement which included written comments by the parties and a Public Participation Hearing at Dorsey High School.

On June 1, 2010, the assigned Commissioner and ALJ convened the Public Participation Hearing at Dorsey High School. After brief presentations by the applicant and United Community Associations, Inc./Neighbors for Smart Rail, approximately 85 members of the public offered comment for the record. More than half of the comments opposed the at-grade vehicular and pedestrian crossings in the settlement agreement and instead supported complete grade-separation of all light rail and vehicular and pedestrian traffic by either placing the light rail tracks in a bridge over the Farmdale crossing or

underground. Other commenters recommended approval of the settlement agreement to enable the Expo line to move towards completion.

The Commission has received 37 written comments from the public on the proposed Farmdale station crossing. One comment opposed the station and the other 36 supported it.

On June 4, 2010, United Community Associations, Inc. and Neighbors for Smart Rail filed joint comments opposing the settlement agreement. The opposing parties reiterated their argument that the Commission's 2009 decision authorizing amendments to the application precluded non-grade-separated crossing proposals and contended that the testimony previously presented by the school district showed that Dorsey students are "distracted," likely to take "risks that adults would not," and that two or three students per day are identified as being "under the influence of alcohol or marijuana."¹

Also on June 4, 2010, Expo and the Los Angeles Unified School District amended their motion for approval of the settlement agreement and the settlement agreement itself to reflect that the Los Angeles County Metropolitan Transportation Authority had joined the settlement agreement.

The settling parties responded on June 11, 2010, that the Commission did not limit the types of alternatives that Expo could present in the amendment to the application and the assigned ALJ's and assigned Commissioner's determination are binding.

¹ United Community Associations, Inc. and Neighbors for Smart Rail Comments on Settlement at 3 - 4.

3. Description of the Settlement Agreement

The settlement agreement provides for construction of a passenger station at the intersection of Farmdale Avenue and Exposition Boulevard, with Farmdale Avenue open to crossing vehicular and pedestrian traffic at-grade at Exposition Boulevard. This crossing would have quad gates, flashers, bells, and traffic signals to control vehicular traffic. The passenger station would be constructed as a near-side split-platform configuration at the intersection of Farmdale Avenue and Exposition Boulevard and all trains would stop at each platform prior to reaching the crossing. A small train control and communications building would be located east of the station along Exposition Boulevard. Approximately 5,000 square feet of property would be acquired from Dorsey High School for the construction of the eastbound platform, and would result in the loss of approximately 19 parking spaces. These lost spaces would be made up by Expo in a new paved 26-space parking lot on the northeast corner of the intersection of Exposition Boulevard and Farmdale Avenue.

To the west of Farmdale Avenue, construction of the eastbound platform would require relocating overhead utility lines and an electrical transformer. The existing Dorsey High School driveway would also be realigned to accommodate the pedestrian plaza for the at-grade pedestrian crossing, with a similar pedestrian plaza on the other side of the tracks, both including specifications for swing gates, pedestrian gates, and traffic signals to control pedestrian and vehicular traffic.

4. Need for a Hearing

No party has identified a disputed issue of material fact relating to the settlement agreement so no evidentiary hearings are necessary. Thus, we find

that the record on this consolidated proceeding can be closed and the matter determined at this time.

5. Discussion

5.1. Commission Standard for Considering Settlement Agreements

In this application, Expo bears the burden of proof to show its requested crossing is safe. In order for the Commission to approve any proposed settlement, the Commission must be convinced that the parties have a sound and thorough understanding of the configuration of the proposed crossing, the future users of the proposed crossing, the safety measures that will be employed, and are able to assess the overall safety of the users of the crossing. This level of understanding of the proposed crossing and development of an adequate record is necessary to meet our requirements for considering any settlement. These requirements are set forth in Rule 12.1, which states, in pertinent part:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

As discussed below, we find the settlement agreement consistent with Rule 12.1.

5.2. Reasonable in Light of the Record as a Whole

As reflected in previously filed testimony, the parties held different positions on the crossing proposals initially brought forward by the applicant. After the Commission's 2009 decision, the applicant offered four alternatives, one of which for the first time included constructing a station at the Farmdale crossing.

All parties to this proceeding, with the assistance of the Commission's Rail Safety staff, began settlement negotiations in the Commission's hearing room

immediately after the conclusion of the September 30, 2009, prehearing conference. A formal settlement conference was held on January 29, 2010, which all parties and the Commission's staff attended.

Although United Community Associations, Inc. and Neighbors for Smart Rail did not join the settlement agreement, they were present during the negotiations and offered their views on the detailed design for the proposed Farmdale station. The settling parties considered the facts and law relevant to this case before agreeing to a specific design for the station, and used their collective and different experiences to produce a station design that offers students and vehicles superior safety.

The settling parties believe that the settlement agreement balances the various interests affected in this proceeding, reflects appropriate compromises of the parties' litigation positions, and is reasonable.

The opposing parties contend that only a grade-separated crossing is safe. As set forth below, we have fully analyzed this contention in accord with our seven criteria for evaluating at-grade crossings and concluded that, on balance, the proposed Farmdale station and at-grade crossing offers pedestrians a safer crossing than the pedestrian overcrossing alternative.

Therefore, we conclude that the Farmdale station alternative shown in the proposed settlement agreement is reasonable in light of the record.

5.3. Consistent With Law and Prior Commission Decisions

The seven criteria from prior Commission decisions for evaluating a proposed grade separation are discussed below.

5.3.1. Public Need for the Crossing

No party contended that the Farmdale Avenue crossing of the Expo line was not needed.

5.3.2. A Convincing Showing That All Potential Safety Hazards Have Been Eliminated

In D.09-02-031, the Commission found that Expo's proposed state-of-the-art system of gates and other warning devices at the Farmdale crossing can be avoided easily by pedestrians such that the previous proposal would not eliminate all potential safety hazards.

The now-proposed Farmdale station addresses directly the greatest risk for pedestrians – trains moving through the crossing at top speed – by mandating that each train come to a complete stop at the station and then proceed through the intersection. All trains going through the intersection will begin at zero miles per hour and only have about 110 feet in which to accelerate before the crossing is cleared. Automatic train protection shall be set on all light rail vehicles such that the vehicle will never exceed 15 miles per hour when the cab of the light rail vehicle is in the Farmdale crosswalk. The Farmdale station shall be constructed such that the rail vehicle operator will have a clear line of sight from the platform to the entire intersection, and the train will not leave the station until the operator has verified that the at-grade crossing is clear. In conjunction with the safety devices and signals for pedestrians and vehicles, the proposed Farmdale station substantially eliminates the risk of high speed collisions.

To assist Expo line patrons and the public in adapting to the Expo line station at Farmdale Avenue, the Los Angeles County Metropolitan Transportation Authority will operate its Ambassador program at the Farmdale station for one year. The Ambassador program will provide retired bus and

train operators to educate the public about safe practices around light rail tracks and will identify unsafe behavior, as well as reporting any such behavior to the program manager. As provided in the settlement agreement, Ambassador program representatives will be present during peak school transit times of 7:30 a.m. to 9:30 a.m. and 2:30 p.m. to 4:00 p.m.

The proposed Farmdale station has several advantages over the pedestrian overcrossing, vehicular crossing closed option found practicable by the Commission in D.09-02-031. When considering the overcrossing, the Commission had before it only a limited description of the structure and no specific construction-quality plans. After the decision issued, Expo moved forward with more detailed engineering of the constrained space at the crossing and determined that a nearly four-story tall, approximately 300 feet long structure would be necessary to provide a pedestrian separated crossing. Requiring large numbers of students to move through this lengthy structure with many concealed portions, including two elevators, creates serious safety and policing issues. The entrance to the structure would need to be located near the school building and would also require removal of a significant number of mature trees on the school grounds.

In contrast, the station proposal will place a pedestrian plaza near the corner between the school and the Expo line, with access to the station on that side of the intersection. Both portions of the “split” station will include ticket machines, benches, shelter, and will be lighted and landscaped. The intersection will have a stop light, a well-marked pedestrian crossing, and all required safety equipment. Additional secure parking for school personnel will be available on the northeast corner, which will also provide facilities for campus police. The entire crossing will be open to clear view by police and other monitors. The

station proposal also retains a vehicular crossing, which is particularly useful near a school to improve traffic flow during peak use times. The advantages of the Farmdale station alternative persuaded the Los Angeles Unified School District to support the at-grade with a station proposal and it set aside its opposition to the original at-grade proposal which did not include a station.

5.3.3. The Concurrence of Local Community and Emergency Authorities

As noted in D.09-02-031, Expo reviewed the Expo Line project with the City Bureau of Street Lighting, Fire Department, and other Los Angeles agencies; as well as the California Department of Transportation, and the Commission's Rail Safety staff.

The Los Angeles Unified School District and the Los Angeles County Metropolitan Transportation Authority are parties to the settlement agreement and encourage the Commission to approve it.

5.3.4. The Opinions of the General Public, and Specifically Those who may be Affected by an At-Grade Crossing

The public's views about the proposed settlement agreement and station were addressed at the June 1, 2010, Public Participation Hearing. More than half of the approximately 85 commenters opposed the Farmdale crossing being constructed at-grade. Many of the opposing commenters supported complete vehicular and pedestrian grade separation. That alternative, however, has not been presented by Expo and, the Commission declined to find such options practicable in D.09-02-031. Expo also contends that as a result of its outreach into the community, the nearby public is satisfied with the revised proposal for the Farmdale crossing. The Commission has received 18 written comments from the

public on the proposed settlement. One comment opposed the proposal and the other 17 supported it.

5.3.5. Although Less Persuasive Than Safety Considerations, the Comparative Costs of an At-Grade Crossing with a Grade Separation

The settling parties state that improving safety rather than lowering cost is the driving factor in their preference for the proposed Farmdale station crossing, but offered no specific cost information.

5.3.6. A Recommendation by Staff that it Concurs in the Safety of the Proposed Crossing, Including any Conditions

The Commission's Rail Safety staff supported the originally-proposed Farmdale Avenue at-grade crossing. The Staff participated in the settlement negotiations and raised issues that have been addressed. The Staff has raised no further safety issues with the Farmdale station proposal.

5.3.7. Commission Precedent in Factually Similar Crossings

The settling parties noted that the Commission accorded little or no weight to this issue in D.09-02-031 and encouraged the Commission to evaluate the proposal on its own merits.

5.3.8. Conclusion

On balance, the Farmdale crossing station proposal substantially diminishes the safety issues created by a pedestrian at-grade crossing, without adding new safety and aesthetic issues. The station also adds to the neighborhood convenience by providing walkable access to the Expo line for residents and students and retains the vehicular crossing. We, therefore,

conclude that the Farmdale station alternative is superior to the pedestrian overcrossing, vehicular crossing closed option.

5.4. In the Public Interest

Numerous Commission decisions endorse settlements and support the public policy favoring settlement of disputes that are fair and reasonable in light of the whole record.² The Commission's support of this public policy furthers many worthwhile goals, including reducing the expense of litigation, conserving the scarce resources of the Commission, and allowing parties to reduce the risk that litigation will produce unacceptable results.³ Furthermore, as analyzed above, the provisions of the settlement agreement will result in a Farmdale station crossing that is superior to the pedestrian overcrossing, vehicular crossing closed option. We, therefore, conclude that the public interest will be served by approving the settlement agreement.

We find that the requirements of Rule 12.1 have been met and the settlement agreement should be approved.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

² D.88-12-083 and D.91-05-029.

³ D.92-12-019.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The parties, along with the Commission Rail Safety staff, began settlement negotiations after the prehearing conference on September 30, 2009.
2. The settlement agreement provides for a split platform light rail station located east and west of Farmdale Avenue.
3. The settlement agreement provides for operational constraints such that no light rail vehicle will exceed 15 miles per hour while the cab is located in the Farmdale Avenue crossing.
4. The settlement agreement provides that approximately 19 school parking spaces will be lost, but these lost spaces will be more than made up by a new paved 26-space parking lot on the northeast corner of the intersection of Exposition Boulevard and Farmdale Avenue.
5. The settlement agreement provides that an existing Dorsey High School driveway will be realigned to accommodate the pedestrian plaza for the at-grade pedestrian crossing, with a similar pedestrian plaza on the other side of the tracks, and that both plazas will include specifications for swing gates, pedestrian gates, and traffic signals to control pedestrian and vehicular traffic.
6. The settlement agreement provides that the Los Angeles County Metropolitan Transportation Authority will operate its Ambassador program at the Farmdale station for one year to assist the public in safely using the station and crossing.
7. All parties to the settlement agreement will coordinate and collaborate to identify and address any safety issues that may arise.

8. On balance, the proposed Farmdale station is a superior alternative to the pedestrian grade-separated, vehicular crossing closed option adopted in D.09-02-031.

9. D.10-04-036 certified the Addendum to the Final environmental Impact Statement/Final Environmental Impact Report for this project/or portions thereof.

Conclusions of Law

1. No party has identified a disputed issue of material fact so no evidentiary hearings are necessary. The record on this application can be closed and the matter determined at this time.
2. The attached settlement agreement is reasonable in light of the whole record, consistent with law and in the public interest.
3. These consolidated applications should be closed.

O R D E R

IT IS ORDERED that:

1. The Exposition Metro Line Construction Authority is authorized to construct an at-grade crossing of Farmdale Avenue by the Exposition Boulevard Corridor Light Rail Transit Line including a station with split platforms east and west of the intersection of Farmdale Avenue and Exposition Boulevard.
2. The settlement agreement among Exposition Metro Line Construction Authority, protestant Los Angeles Unified School District, and Los Angeles County Metropolitan Transportation Authority that provides for a station at Farmdale Avenue on the Exposition Boulevard Corridor Light Rail Transit Line, in Los Angeles County, attached hereto as Attachment A, is adopted. The parties must comply with the terms of the settlement agreement which include:

- a. Exposition Metro Line Construction Authority shall construct a station with split platforms east and west of the intersection of Farmdale Avenue and Exposition Boulevard, and such station must allow the rail train operator clear line of sight from the platform to the entire intersection.
- b. Exposition Metro Line Construction Authority must use its best efforts to acquire the property located at the northeast corner of the intersection of Farmdale Avenue and Exposition Boulevard and, after acquisition, must demolish the existing building and construct on the site a surface parking lot secured by a protective fence, with electronic gates and card-key entry, and a modular building for use by the Los Angeles Unified School District School Police. After completion, the property and improvements must be transferred to the Los Angeles Unified School District.
- c. The Los Angeles Unified School District must transfer at no cost to the Los Angeles County Metropolitan Transportation Authority a narrow strip of property of approximately 5,593 square feet along the northern boundary of the Susan Miller Dorsey High School campus for use in the eastbound station platform.
- d. Exposition Metro Line Construction Authority must modify the northeast entrance to the campus to accommodate the eastbound station platform and pedestrian plaza, as well as the southern entrance to the school campus from Rodeo Drive so as to allow extended length vehicles to use the entrance without scraping their undercarriages.
- e. Los Angeles County Metropolitan Transportation Authority must operate its Ambassador program at the Farmdale station for six months before and after the revenue operation date. The Ambassador program will provide retired bus and train operators to educate the public about safe practices around light rail tracks and will identify unsafe behavior, as well as report any such behavior to the program manager. Ambassador program representatives will be present during

peak school transit times of 7:30 a.m. to 9:30 a.m. and 2:30 p.m. to 4:00 p.m.

- f. Exposition Metro Line Construction Authority, Los Angeles County Metropolitan Transportation Authority, and the Los Angeles Unified School District must coordinate and collaborate with each other regarding any safety concerns that arise from the operation of the light rail vehicles.

3. Consolidated Applications (A.) 06-12-005, A.06-12-020, A.07-01-004, A.07-01-017, A.07-01-044, A.07-02-007, A.07-02-017, A.07-03-004, A.07-05-012, and A.07-05-013 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

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 23, 2010, at San Francisco, California.

/s/ LILLIAN LI
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N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

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