

Decision **PROPOSED DECISION OF ALJ ROSENTHAL**
(Mailed 4/16/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Construction Authority for an order authorizing the construction of two light rail transit tracks at-grade crossing West Avenue 45 in the City and County of Los Angeles, California.

Application 00-10-012
(Filed October 11, 2000)

And Related Matters.

Application 01-06-011
Application 00-11-050
Application 00-11-040
Application 00-11-034
Application 00-11-033
Application 00-11-032
Application 00-11-029
Application 00-11-016
Application 00-11-015
Application 00-10-050
Application 00-10-039
Application 00-10-033
Application 00-10-020

(See Appendix A for List of Appearances)

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OPINION

Summary

Los Angeles to Pasadena Metro Blue Line Construction Authority (Blue Line) granted conditioned permission to construct at-grade crossings in Los Angeles and Pasadena. Blue Line denied permission to construct an at-grade crossing at Del Mar Blvd. in Pasadena.

History of the Proceeding

The subject of this application is a proposed light-rail transit line to serve between the Union Station in Los Angeles and Sierra Madre Villa Boulevard in Pasadena. Applicant Los Angeles to Pasadena Metro Blue Line Construction Authority (Blue Line)¹ intends to utilize the former right-of-way of the AT&SF Railroad for much of its route. The total length of the project is 13.6 miles over exclusive and semi-exclusive right-of-way. Between 200-250 trains per day, operating at speeds up to 55 miles per hour, are expected. It proposes 28 street crossings at-grade and 47 separated or closed crossings in the cities of Los Angeles, South Pasadena, and Pasadena. (Exhibit (Exh) 18, pp 31-34) Public Utilities Commission (Commission) permission is required for these crossings. (Public Utilities Code Section 1201.)

Blue Line asserts that under its funding legislation that provided funds for construction of the project there is an urgent need to complete quickly. For this reason Blue Line has adopted the “design-build” methodology. Construction

¹ During the evidentiary hearings the name of applicant changed from “Blue Line” to “Gold Line” to avoid confusion with another light-rail transit system. All references in this proceeding are to “Blue Line,” which will be used in this decision.

between crossings has been progressing in anticipation of a favorable Commission decision so as to minimize any time loss awaiting regulatory approval. While this has the advantage of shortening the time of construction it has the disadvantage to reviewing bodies of being faced with the argument that hundreds of millions of taxpayers' dollars are already invested and are at jeopardy if approvals are not obtained.

Planning for the project began at least as early as 1980 (Exh 18, pp. 4-10) and progressed under the Los Angeles County Transportation Commission and the Los Angeles Metropolitan Transportation Authority (MTA). Various environmental authorizations in conformance with the California Environmental Quality Act (CEQA) were obtained. Because of financial difficulties MTA suspended completion of the project in late 1998. At that time the Legislature passed and the Governor signed Senate Bill 1847, establishing the Blue Line. Blue Line was given the responsibility of completing the project begun by MTA. Upon completion the project will be returned to MTA to operate.

Light rail transit differs from rail rapid transit, such as BART in the San Francisco Bay Area, in that it is composed of trains of up to three cars, generally has closer-spaced stations, usually operates at lower speeds, has shorter stopping distances, and is less costly to build and operate. (Exh 18, pp. 17-18.)

Authority for the first portion of this project was obtained through Decision (D.) 95-09-067, D.95-01-043, D.95 02-030, and D.00-12-007. The 14 applications in this last phase of the project were filed between October 11, 2000 and June 8, 2001. By Ruling dated February 21, 2001 Administrative Law Judge (ALJ) Sheldon Rosenthal consolidated the applications for hearing and decision. Following meetings between the parties, primarily Blue Line and the Commission's Railroad Crossing Engineering Section of the Rail Safety and

Carriers Division (Staff), amendments to most of the applications were filed between April 11, 2001 and June 8, 2001. (Exh 39) From that date forward the applications remained stable until December 12, 2001. At that time Blue Line announced an agreement with Staff on a reconfiguration of East and West Pasadena Avenue crossings (Exh 55) which were the subject of Application (A.) 01-06-011.

Public Participating Hearings

With the unanimous consent of the parties, the ALJ conducted a telephonic Prehearing Conference (PHC) on March 6, 2001. A preliminary Scoping Memo was issued on March 23, 2001. Following receipt of many amendments or supplements to the various applications, another PHC was held on August 30, 2001 at the Commission Courtroom in Los Angeles. Unexpectedly in attendance were over 50 people who were concerned about the proposed at-grade crossing at Avenue 45. The ALJ permitted the public to address the Commission, in effect turning this portion of the PHC into an unscheduled public participation hearing, that was followed by a formal PHC. A final Scoping Memo was issued on September 28, 2001 outlining the issues to be considered and setting November 5, 2001 as the initial date of hearing.

At the request of Blue Line another public participation hearing was arranged to precede the evidentiary hearing. The auditorium for this hearing was packed with approximately 350 people, while another 100 persons were not permitted entrance because of the danger of overcrowding. Speakers participated in this hearing for one-and-a-half days. Petitions, letters, and polls containing the names of many thousands of participants were presented to the ALJ. Since that time we have received hundreds of communications urging various views on one or more of the crossings. There is near unanimous support

for construction of the project. Where the controversy arises is Blue Line's proposal to have some crossings at-grade, rather than separated. This mirrors the controversy in the evidentiary hearing.

Assigned Commissioner Ruling

On November 1, 2001, five days before hearings were to start, Assigned Commissioner Bilas issued a Ruling (ACR) granting Blue Line authority to construct the project "at its own risk." This Ruling was in response to a motion of Blue Line. That motion claimed that Blue Line could incur extra taxpayer costs of up to \$14 million if it could not complete the construction in the manner originally planned, rather than wait for Commission approval. The ACR warned Blue Line that if it does not accept this Ruling the authority granted might not be upheld by any final order of the Commission. Accompanying the Ruling were several stringent conditions leaving no doubt that any work done contrary to any final order would have to be undone at Blue Line's expense. Blue Line accepted the Ruling and its conditions (Transcript (Tr) 428) and to the best of our knowledge proceeded with construction.

Several parties contested the ACR of November 1, 2001. The Assigned Commissioner submitted his ruling to the full Commission. On January 9, 2002, the Commission issued D.02-01-035. That Decision declined to confirm the ACR, meaning that there was no longer authority for Blue Line to construct the crossings as it contemplated until authorized by a Commission order. The Decision also granted final Commission authority to proceed with the crossings in A.00-10-020, A.00-10-033, A.00-10-039, A.00-10-050, A.00-11-029, A.00-11-032, A.00-11-033, A.00-11-034, and A.00-11-050. This removes these applications from the consolidated proceeding and from the purview of this decision. In effect the

Commission granted approval of many of the crossings that were not specifically the subject of any controversy by the parties.

Evidentiary Hearings

The formal evidentiary hearings consumed eleven-and-one-half days, beginning November 6, and ending December 14, 2001. Concurrent opening briefs (O.B.) were filed on February 7 and reply briefs (R.B.) on Feb 25, 2002, at which time the matter was submitted.

A disturbing trend occurred during the hearing. Blue Line's witnesses were constantly being juggled from what would be their normal order of appearance. In particular, Dr. Stone, the project manager for Blue Line, appeared to be used as a "fill-in" for other witnesses who had obligations that inhibited their appearance at the expected time. While this rearranging was always done with the unanimous concurrence of the parties it created a disjointed record. The ALJ commented about this and the difficulty it would create for his review process, as well as for ours. (Tr 1726-28). While some accommodation should be given when there are multiple witnesses, we caution the parties that appearance at our hearings is as important as are other commitments, and that the indulgence exhibited by the ALJ should not be expected in the future.

Positions of the Parties

Several protests to various applications were filed. Mount Washington Association (Association) objects to the proposed at-grade crossing at Avenue 45 on the basis of concerns for safety and noise. It seeks an order requiring grade separations, but also presents alternatives. Mount Washington Homeowners Alliance (MWhA) favors separations but also presents alternatives. The Citizens Against the Blue Line At-Grade (NOBLAG) advocates construction of grade separations at Del Mar Blvd., California Blvd., Fillmore St., and Glenarm St.

within the City of Pasadena. Jo Anne Barker (Barker) protests all of the applications, claiming that the applicable federal, state, and local legal requirements had not been met. By ALJ Ruling of February 15, 2002 Barker was permitted to withdraw from the proceeding. Staff initially protested all applications, yet its brief raises concerns only about Avenue 45. The civic and public safety officials of the cities of Los Angeles, South Pasadena, and Pasadena support the project as filed.

Commission Jurisdiction

Blue Line seeks authority to construct the at-grade crossings is still in issue pursuant to Public Utilities Code Sections 1201-1205. It additionally seeks approval of proposed at-grade crossing protections. No question has been raised as to the Commission's jurisdiction to hear and decide these matters.

Practicability

This is a subject that was raised at the PHC and has permeated the proceeding. "Practicability" is found in Public Utilities Code Section 1202, which provides in part:

1202. The Commission has the exclusive power:

(c.) To require, where in its judgment it would be *practicable*, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made. . . . (Ital. Added.)

It is similarly encountered in Rules 38(d) and 40 of the Commission's Rules of Practice and Procedure (Rules) pertaining to construction of a road across railroad tracks, or vice versa. Under these Rules the applicant must provide a statement showing why a separation is not *practicable*.

The leading case on the meaning and application of this term is *City of San Mateo*, (1982) 8 CPUC2d 572. That case prescribes the definition of practicability

to be used to decide grade crossing cases, sets forth the policy behind its use, and applies this definition and policy to the proceeding before it. Practicable is explained as follows:

And it should be carefully noted that the word used in the statute (and carried over to the requirements for applications in Rule 38(d) of our Rules of Practice and Procedure is “practicable” rather than “practical.” “Practicable” means being possible physically of performance, a capability of being used, a feasibility of construction. On the other hand “practical” connotes the means to build, the possibility of financing. For example, “a plan might be practicable in that it could be put into practice, though not practical because . . . too costly . . . “ (Webster’s New Dictionary of Synonyms (1973) p. 625.) (Supra at 581, fn 8)

The policy in favor of public safety over economy is stated at pages 580-581:

The PU Code provides that no public road, highway, or street shall be constructed at grade across a railroad track without prior permission from this Commission (PU Code § 1201), and places exclusive jurisdiction with this Commission to require, where in our judgment it would be practicable, a separation of grades (PU Code § 1202). The reason for this latter requirement is that railroad grade separations constitute ultimate protection, since all grade crossing accidents and delays then are eliminated. It has long been recognized that the Commission should not grant applications for crossings at grade where there is a heavy movement of trains, unless public convenience and necessity absolutely demand such a crossing. (*Mayfield v S.P. Co.* (1913) 3 CRC 474). The advantages which might accrue by way of added convenience and financial benefit are outweighed by the dangers and hazards attendant upon a crossing at grade. Accident incidence is related to increases in the number of crossings; therefore, grade crossings should be avoided whenever it is possible to do so. (*Kern County Bd. Of Supervisors* (1951) 51 CPUC 317). As long ago as 1971, the National Transportation Safety Board declared that “Grade crossings are not compatible with rail rapid transit operations”, and in 1978 the

Railroad-Highway Grade Crossing Handbook issued by the Federal Highway Administration, stated unequivocally, “Lines for high speed railroad passenger service should have no grade crossings.”

And finally, the action that the Commission requires when an at-grade crossing is proposed can be found at page 581:

Today in this State a proponent who desires to construct a new at-grade crossing over mainline railroad trackage carrying any appreciable volume of passenger traffic has a *very heavy burden to carry*. Against the aforestated formidable backdrop of fundamental statutory and professional opprobrium, he must *convincingly* show both that a separation is impracticable and that the public convenience and necessity absolutely require a crossing at grade. (Ital. Added.)

As noted by Blue Line, this language from *City of San Mateo* has been repeated in subsequent Commission decisions, such as *City of Oceanside* (1992) 43 CPUC2d 46 and *City of San Diego* (1998) D.98-09-059, rhng. den. (O.B. p 34)

Blue Line distinguishes the instant proceeding from *San Mateo*, *Oceanside*, and *San Diego*, *supra*, on the basis that those cases involved joint usage of tracks by heavy and light rail trains. We agree that this is a distinction, but is it a difference? We think not.

Blue Line argues that a “one-size-fits-all” approach to practicability does not make sense. It urges us to consider the differences between light and heavy rail. (O.B. p 37) In considering this approach we first look to Public Utilities Section 1202(c) and Rules 38(d) and 40. None of those distinguish between heavy or light rail operations over a crossing. Moreover, require that there be a heavy rail operation over the proposed light rail crossing before practicability is to be considered. Certainly the safety of the proposed crossing is influenced by the characteristics of heavy versus light rail, but safety and practicability are different subjects.

The need to address practicability does not disappear with the reduction of heavy rail movements. In *City of San Mateo* there was the possibility of 60

commuter trains daily over the proposed crossing, plus unnumbered freight operations. (*Supra* at 578.) *City of Oceanside* showed 16 Amtrak movements per day and only 6 freight movements per day, with additional Amtrak and commuter trains planned. (*Supra* at 49.) Yet it cited *City of San Mateo*, and the need for a convincing showing that a separation was impracticable, in denying the application for an at-grade crossing. *City of San Diego, supra* indicated there would be 150 light rail movements over the crossing in question and only two freight movements. (*Mimeo.* p 3) Once again the Commission denied an at-grade crossing, relying on *City of San Mateo*. The Commission has not been restricting *City of San Mateo* to instances where there are major, or even moderate, heavy rail movements.

Finally Blue Line would have us change the definition of “practicable” from that contained in *City of San Mateo* to one that would consider a cost-benefit analysis. (O.B. p. 38) We have some sympathy with this argument. The dictionary approach to this word presents a much more formidable barrier to all at-grade crossings than “the very heavy burden” and need to “convincingly show” test mentioned in *City of San Mateo*. Dr. Stone, project manager for Blue Line, stated that if cost were not a consideration there would be no physical reason preventing construction of separations for light rail lines. (Tr 1714) But this is the real world, and cost to taxpayers is a consideration. Indeed, even in this proceeding D.02-01-035 authorized the construction of at-grade crossings in A.00-10-020, A.00-11-033, and A.00-11-034. These were crossings where Blue Line fully explained the provisions it was making for safety. There was no evidence of problems and no protest at the conclusion of the evidentiary hearings. Staff analysis gave us some assurance of safety. While not employing

a formal cost-benefit approach we do take these factors into consideration in applying the judgment allowed to us under Public Utilities Code Section 1202(c).

We have and will give consideration to the cost of a separation in comparison to the cost of an at-grade crossing. However, we will not demand a formalized cost-benefit study for every crossing for which application is made. Such a requirement would quickly become a duel among calculators and economists. We are also aware that the cost of a separation will, with very few exceptions, be multiples of the cost of an at-grade crossing. Were this not so there would be no desire for at-grade crossings.

Our determination in this and future applications will continue to apply the “heavy burden” and “convincing” standard enunciated in *City of San Mateo, supra*. When an application is filed to construct an at-grade, rather than a separated crossing, we shall look for the following:

1. A convincing showing of safety by applicant.
2. The concurrence of the local community authorities.
3. The concurrence of local emergency authorities.
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing.
5. Also relevant, though much less persuasive than safety considerations, should be the comparative costs of an at-grade crossing in comparison with as grade separation.
6. A recommendation by staff indicating that it concurs in the safety of the proposed at-grade crossing, though there may be conditions recommended.

When a hearing is deemed necessary we expect the evidence to include these elements. The weight to be accorded each issue will vary, depending on our evaluation of the overall presentation made. Applicant bears the heavy burden

of proving safety, rather than protestants proving unsafe conditions. Where there is a request for an at-grade separation a mere preponderance of evidence will not suffice. The safety of the proposed at-grade crossing must be convincingly shown. We start with the presumption that a separation is appropriate. To overcome this presumption we expect evidence on future pedestrian and vehicle traffic over the crossing, the protective measures to be employed, the sight lines for trains and vehicles, the speed of trains and vehicles at the crossing, the number of train movements and length of trains, the ease of evasion of crossing protection by vehicles and pedestrians, and any other factors peculiar to the crossing. The detailed analysis of the crossing placed in evidence by our staff and the staff recommendation will be of great concern.

California Environmental Quality Act

Protestants assert a failure to comply with the CEQA, Public Resources Code (P.R.C.) §§ 21000 *et seq.*, as a basis for denial of these applications. Association asserts that there is no environmental review of the proposed at-grade crossings at Avenue 45 and Avenue 50 in Los Angeles. (O.B. p 4) It points to the testimony of Applicant's environmental witness that a separation was never considered for these streets (Tr 637), and that there is no reference to any specific environmental analysis of these crossings other than their location on a map. (Tr 1396) Similarly, NOBLAG's Opening Brief (p 40) cites the testimony of Witness Ross that the four proposed crossings in Pasadena are not assessed in the environmental documents. (Exh 33, p 3)

Blue Line does not dispute these assertions. Rather, it contends that the environmental documents provided sufficient notice to anyone concerned with the location of proposed crossings on the project, and no more is required under CEQA. (O.B. pp 120-122) Not stated, but certainly implied, is the assertion that

the alleged deficiencies should have been raised with the lead agency at the time the environmental documents were being considered, not at this late stage. We call the parties' attention to the ALJ Ruling of March 23, 2001. At that time the parties were told that errors in the environmental documents should be brought to the attention of the agency that certifies these documents. At this stage of the proceedings it is not our duty to second-guess the lead agency. As a Responsible Agency our duty is to review and consider the environmental documents produced by that lead agency before we grant an application. (CEQA Guidelines Secs. 15050(b) and 15096) This process was accomplished in our Interim Decision in this proceeding dated January 9, 2002. There we stated:

“Of the 14 applications now pending before the Commission (excluding A.00-04-022 already approved by the Commission), only two of those applications involve rail crossings for which any significant environmental impact has been identified in the Environmental Documents: A.00-11-016 and A.00-10-039.” (D.02-01-035, mimeo. at p. 13.)

These pertained to a loss of parking and traffic impacts which would result whether a grade separation or at-grade crossing were constructed. The Commission determined that neither of these significant impacts stems from the proposed grade crossings, and thus findings thereon need not be made. (P.R.C. § 21153(c) (*Id.* at p 14) See also CEQA Guideline 15096(d).

The remaining environmental issue concerns whether the information in the environmental documents is stale or has been superceded by recent events. NOBLAG argues that under the provisions of P.R.C. § 21166 a supplemental study is required. (O.B. pp 42-44) It claims that the environmental documents pertaining to traffic estimates at the crossings in Pasadena are now woefully inadequate. Addendum #3, which is the most recent environmental document,

reviewed the proposed project and determined that the facts triggering P.R.C. § 21166 were not present. This Addendum was adopted in October 2000. Our record does not disclose a protest to this document by NOBLAG. As a responsible agency we have no statutory basis on which to challenge this Addendum in this Opinion.

Avenues 45 and 50

Blue Line proposes an at-grade crossing for these streets. In order to provide protection to the public, Blue Line plans to have four-quadrant gates specifically designed to inhibit motorists from driving around a lowered gate. There will also be swing gates for pedestrians. (Exh 18, Tab G) Blue Line's project manager testified that separating Avenue 45 would require substantial changes to the Southwest Museum Station immediately south of Avenue 45. Association, MWWA, and Staff oppose t Blue Line's plan, instead, recommending grade separations, or other alternatives. We shall first address the issue of grade separations.

Association asserts that we should not even consider the safety of an at-grade crossing since Blue Line never examined the possibility of separations. Association cites *City of Merced* (1983) 12 CPUC2d 744, 755 as authority for requiring a complete investigation of alternatives before requesting an at-grade crossing. Blue Line claims there is no money in its budget for additional separations. (Tr 1688) This argument is circular. When seeking funds from the Legislature a supplicant presents a sum to cover its plans. The plans for this project did not include separation at Avenue 45. Thus, lack of funds is a direct result of not seeking them.

Blue Line did present a cost comparison between a separation at Avenue 45 and its at-grade proposal, as well as detailed explanations of the

safety measures it intends to undertake. Blue Line also referred to property condemnation that would be required if a separation were to be built. The threshold announced in *City of Merced, supra*, does not require creation of a complete straw man, with detailed engineering and environmental analyses. We believe that Blue Line has presented sufficient evidence to warrant consideration of its applications.

Next we examine the claim of Association, MWH, and Staff that Blue Line has not met its burden of proof with regard to the safety of the at-grade crossing at Avenue 45. All of these parties desire a grade separation but propose safety conditions should an at-grade crossing at Avenue 45 be approved. These shall be addressed below.

Staff originally did not oppose the applications in so far as they related to Avenues 45 and 50, but later amended its position to oppose at at-grade crossing at Avenue 45. It argues for a grade separation, with alternatives should this be rejected. In advocating a separation Staff looked only to public safety, with no consideration of cost. (Tr 2051)

Blue Line went to great effort to illustrate the various safety features that are to be built into the proposed Avenue 45 crossing. It also drew on the experience of the Red Line in Long Beach. (Tr 1027, 1453-57) Recognizing the intensity of the controversy over Avenue 45, Blue Line's project manager made several suggestions to ameliorate the situation. He proposed installing additional traffic signals, employing a traffic guard during school commute times, restricting speed of the train to 25 miles per hour, replacing pedestrian gates with swing gates, changing pedestrian crosswalks and relocation of a bus stop on nearby Marmion Way, and installing a vehicle detection feature that

would automatically signal the train to come to an immediate stop if a vehicle is in the crossing. (O.B. pp 79-81, 84-87)

Staff argues that if a separation is not ordered, then an alternative could be the closing of Avenue 45 to both auto and pedestrian traffic. (Tr 1868, 2040) Staff was clear that this would not provide the same level of safety as a separation, since pedestrians could evade the barriers and access the tracks. (Tr 1868) Avenue 45 is a preferred route for school children. Whether this Commission can order the closing of a city crossing without notice and an opportunity to be heard to that city is a legal matter raised at the hearing (Tr 2038) and not addressed in Staff's briefs.

Staff also proposes that should either separation or closure be rejected, a further alternative could order the trains to stop at Avenue 45, require the operator look both ways, and if the intersection is clear of motorists and pedestrians, then proceed through the crossing. (Tr 2042-3) Staff does not believe that merely reducing the speed of the train at Avenue 45 would provide sufficient safety (Tr 2029), though it does not have this hesitation for Avenue 50. (Tr 2032) We note that Staff does not propose a similar "stop and proceed" measure for more heavily traveled proposed at-grade crossings, such as Del Mar Blvd. A "stop and proceed" measure would not diminish any noise problems to be considered later, since bells on the gates would still be required, and the engine horn would sound upon commencement of the train through the intersection. (Tr 2048) It would not eliminate the fear of the Staff witness that motorists waiting at a stoplight at an adjacent intersection might find themselves stuck on a queue that extended over the Blue Line tracks and thus be vulnerable to injury. We note that the same Staff witness testified that all three of his proposed alternatives are equally safe. (Tr 2050)

While preferring a grade separation at Avenue 45, MWHHA has few illusions that it would become a reality. (O.B. p 2) It decries closure, since this would inconvenience the public and impede access to Mount Washington for safety vehicles. (O.B. p 5) The “stop-and-proceed” alternative is also rejected by MWHHA because of its potential delay of emergency vehicles (O.B. p 6).

MWHHA offers a fourth solution: extend the proposed type of operations of Blue Line between Avenues 57-51 to include Avenues 50 and 45. (O.B. pp. 6-13) This suggestion would have Blue Line operate much as a streetcar over this portion of its right-of-way, even though it is running on an exclusive right-of-way except for the crossings. Blue Line plans to operate between Avenues 57 and 51 at no higher than 20 miles per hour, and to be subject to any traffic signals at any intersection, just as would any motorist or pedestrian. (O.B. pp 112-114) No gates are proposed for these intersections, since the speed would be reduced. With no gates there is no problem of noise in the area.

Blue Line rejects extending this solution to Avenue 50 on the basis that it would not be as safe as its proposed gated solution. (Tr. 2130) Blue Line’s project manager testified that Avenue 51 and Avenue 50 are so close that a separation at Avenue 50 would require a separation at Avenue 51. (Tr 1230-31)

Association also presents some alternatives. It proposes that the 20-miles per hour speed restriction planned for Avenues 57 to 51 be extended to Avenue 50. It supports Staff’s proposal for a “stop-and-proceed” procedure at Avenue 45. (O.B. pp. 34-35) It proposes that audible train warnings not be required at Avenue 45 except in emergencies. (O.B. p. 35) It further recommends that audible warnings on the gates be limited to the time that the gates are lowering, and then cease. (O.B. p. 36)

Another suggestion is the establishment of a quiet zone for Avenues 45 and 50, as permitted by Public Utilities Code Section 1202(d)(2)(A).

We shall now employ the six-step approach outlined earlier in this decision to determine the practicability of grade separations at Avenues 45 and 50. Blue Line's initial proposal, combined with subsequent additions and ideas developed from the record, meets the very heavy burden we demand to convincingly show us that an at-grade crossing, properly conditioned, could be safely implemented.

For reasons not necessary to detail in this decision, Staff's alternatives were last minute in origin (Tr 1870) and not well-documented. We do not find either the closure or "stop-and-proceed" alternatives for Avenue 45 to be appropriate. Closure is not supported by the local residents. Furthermore, there has been no opportunity to obtain the concurrences of the local civic or emergency authorities. "Stop and proceed" will cause a significant delay in service, rendering the Blue Line less desirable as an alternative to motor travel. While delay in and of itself is insufficient cause to reject a safety procedure, we believe that there are other protective measures that can be taken to make the crossing reasonably and adequately safe, with the understanding that absolute safety can never be totally guaranteed.

As indicated earlier, the local community authorities and the local emergency authorities support Blue Line's proposal. The additional suggestions that we shall adopt will make the crossing even safer.

The general public is quite divided about the need for grade-separations. In the public participation hearings we received impassioned testimony urging us to provide enhanced service without delay. Other speakers told us that it would be foolish to permit at-grade crossings with the potential for accidents

that would ensue. We appreciate these comments and the fervor with which they were given. Our decision will undoubtedly not please everyone, but with an implementation of the conditions imposed we trust reconciliation will arise.

Lastly, we address the subject of cost comparisons. Blue Line asserts that the additional costs for a grade separation at Avenue 45 would be in a range from \$27 to 30 million, plus administrative costs that could increase approximately \$25 million over the estimated two years of construction. This is disputed by Association's witness Raspa. We would pay closer attention to these estimates if we were in doubt as to the safety of a conditioned at-grade proposal.

As was noted earlier, the proposal of Blue Line will restrict its speed to 20 miles per hour between Avenues 57 and 51. Blue Line's project manager testified that extending this speed restriction to additional intersections would add approximately 30 seconds per crossing to its running time. (Tr 1708, 1794) Reducing the speed to 20 miles per hour at Avenues 50 and 45 would extend a 33-minute trip over the whole route of the project to 34 minutes. (Tr 1707) The slower speed would give train operators greater opportunity to react to a possible vehicle stuck in a queue on the tracks. (Tr 1856, 1882) This was Staff's prime concern about an at-grade crossing at Avenue 45. We do not believe that in the interest of safety one more minute would be too much to ask of transit passenger's patience.

In our judgment, the at-grade crossings at Avenues 45 and 50 can be made safe. They have the support of all civic and safety authorities. Conditions proposed by the local residents are very helpful. Staff's concern can be successfully addressed. On that basis, it is our judgment that a grade separation at either of these crossings is not practicable. As will be seen when we discuss

Del Mar Blvd., if we are not convinced of the safety of a proposed crossing, even when conditioned, we will not hesitate to deny an application.

Noise Issue

Association and MWHHA are particularly concerned with the noise that would emanate from bells and horns associated with crossing gates and the train should at-grade crossings be constructed. These warning devices would initially be sounded 200 times per day as trains approach the crossings. This could increase to 250 times per day if ridership so warrants. (Tr 1268) They assert that the geography of the neighborhood is such that the noise would reverberate up the hill and would create a constant nuisance for the residents.

Public Utilities Code Section 7604 requires a locomotive to ring a bell when approaching an at-grade crossing. General Order (GO) 143-B repeats this requirement when an LRV approaches a crossing protected by automatic crossing signals. Several parties proposed alternatives to the normal operations of crossing arm bells and train whistles. Before considering these alternatives we must assure ourselves that we have the authority to deviate from the statute. Section 7604 has three exceptions, one of which is pertinent to this discussion.

“In a city, the ringing of the bell or the sounding of the steam whistle, air siren, or air whistle shall be *at the discretion of the operator* of the locomotive engine.” P.U. Code § 7604(a)(1)(Ital. Added)

Avenues 45 and 50 are both within the City of Los Angeles. If the operator of the engine has the discretion to sound the otherwise required warning device we have no doubt that we may impose conditions under Public Utilities Code Section 1201 so as to eliminate the locomotive whistle or horn, except where required for emergencies.

GO 143-B, with its reference to GO 75-C, similarly requires an LRV operator to sound an audible warning when approaching a crossing. (Sec. 7.09) However, exceptions to the requirements of this General Order are contemplated when there is justification to do so. (Sec. 1.07)

Association and MWA both point to a “quiet zone” established by ordinance in the City of Los Angeles (L.A. Municipal Code, § 72.12) which prohibits blowing or activating a whistle or horn in the Mount Washington area. Staff presented Attorney General Opinion No. 86-504 (69 *Op. Atty Gen. Cal.* 203) indicating that this ordinance is preempted by Public Utilities Code Section 7604. The ALJ took official notice of the ordinance as well as the Attorney General opinion. Staff’s attorney agreed that the Attorney General Opinion applied to local ordinances and that it does not restrict activities of this Commission. (Tr 2031)

In response to the concerns of the Mount Washington residents, Blue Line has agreed to both the establishment of a no-horn zone and the cessation of audible warning devices once crossing gate arms are in the “down” position at Avenue 45. (R.B. p 22) We find it appropriate to include Avenue 50 in this condition. With the exception of the bells sounding when the gates are lowering this inclusion of Ave. 50 extends the quiet zone already proposed between Avenues 57 and 51 through Avenue 45. Since we are eliminating the requirement of a horn at Avenues 45 and 50 except for emergencies there is no need to address the issue of limiting the decibels of that horn, as requested by Association.

Operational matters, such as speed and warning bells, are generally relegated to negotiations between Staff and the operator of the system—here MTA. All parties agreed, however, the Commission could impose conditions on

the operator as a part of this decision. (Tr 1582) Since all parties are in agreement there is no need to establish a test zone as contemplated in Public Utilities Code Section 1202(d)(2)(A).

In sum, we believe that safe and peaceful at-grade crossings can and should be built at Avenues 45 and 50. The proposals of Blue Line and the suggestions of Protestants provide us with sufficient information to grant conditional authorization for this construction. These conditions will be detailed in our findings.

Avenues 51 through 57

The project from Avenue 57 through 51 proposes to be on exclusive right-of-way, except for the at-grade crossings at each intersection. Blue Line has agreed that it will operate at 20 miles-per-hour through these intersections. It has further agreed that it will be subject to the operation of traffic signals, as would a streetcar operating on a non-exclusive right-of-way. Since it will be operating at a reduced speed and be subject to traffic signals there is no need for gates and bells at the intersections or for a horn blast from the train.

None of the parties took issue with Blue Line's proposal. The local civic and safety authorities favor it, and Staff does not oppose. In our judgment, grade separations at these crossings are not practicable.

Pasadena Crossings

NOBLAG opposes the proposed at-grade crossings at Del Mar Blvd., California Blvd., Fillmore St. and Glenarm St., arguing that Blue Line has not met its burden of demonstrating that these would be safe and therefore should be separated. Fillmore St. will be closed to motor traffic and will only be available to pedestrians. Del Mar and California Blvds. are to have four-quadrant gates and pedestrian swing gates installed. Glenarm St. will be equipped with a raised

median, No. 9 gates, and swing gates. All other than Fillmore Ave. will be equipped with an Automatic Traffic Control System (ATCS), about which witness Korve testified,

But as designed, this system will also virtually assure that there will be no accidents. (Tr 1134)

Such absolute confidence summons to mind HAL's famous quote in Arthur C. Clarke's "2001: A Space Odyssey" describing its computer/robot self "foolproof and incapable of error."

Furthermore, there appears to be some conflict as to whether ATCS is currently available. Witness Rix, City Engineer of Pasadena, testified that software for the system has yet to be designed. (Tr 780) Witness Korve stated that ATCS is

"...a standard concept used in many places throughout the world. So it's just as average or standard as an aspirin." (Tr 1130)

We gather from this apparent disagreement that ATCS is actually in use elsewhere but the specific system to be applied to Pasadena, and inferentially elsewhere on Blue Line, has not been developed and tested.

Blue Line presents extensive analyses of the present and anticipated traffic at the Pasadena crossings, all of which lead to the conclusion that the proposed at-grade crossings will be safe. Staff does not oppose at-grade crossings. The local civic and emergency authorities support the at-grade crossings. As with Avenue 45, public opinion expressed at the PPH and in letters and petitions to the Commission is mixed. All who were present favor construction of the Blue Line, but there are fervent supporters for both at-grade and separated solutions.

The evidence presented by Blue Line and the City of Pasadena was questioned at the hearing, and NOBLAG presented extensive opposing

testimony. Though it insists that separations are essential for all crossings, NOBLAG aimed its most concerted fire at Del Mar Blvd. This is the most heavily used proposed at-grade crossing in the entire project. (Tr 1858)

Since the close of the evidentiary hearings the local Zoning Hearing Officer announced approval of a major project at the Del Mar Blvd. intersection. By Ruling dated January 18, 2002 the ALJ permitted NOBLAG to file a declaration explaining the effect that the new complex would have on safety at the Del Mar Blvd. crossing.

All parties were permitted to file responses. Only Blue Line availed itself of this opportunity. In addition to the evidence presented during the regular hearing NOBLAG's declaration raised significant issues concerning the added traffic that would result from 347 new apartments, several businesses, and 1,200 to 1,500 parking spaces associated with the new complex. The declaration also depicts how the new complex will be built over and around the track of Blue Line, so that the train will emerge as from the mouth of a tunnel. Train operators will have restricted sight lines to traffic at the intersection when heading south, as will motorists to the train.

In reply, Blue Line states that this is not new information to the extent that it was mentioned as a possibility in NOBLAG's testimony. The declaration also disputes the severity of the sight-line reduction claimed by NOBLAG. In fact, traffic engineer Korge, sponsored by Blue Line, testified:

Q So is it your testimony that the installation of crossing gates obviates the need to be concerned about sight, line of vision, line of sight, rather?

A If you have gates, then the line of sight is not as important. You always would like to have line of sight just so both sides could see

each other, but it's not necessary when you have positive controls such as gates.

Q Well, focusing though on line of sight, is there some minimal distance down the track that you would consider it necessary for a motorist to be able to see a train or a pedestrian to be able to see a train to have a safe crossing?

A With gates you don't need it. (Tr 1138-39)

The laudatory endorsement of safety provided by gates, even the new 4-quadrant gates, do not satisfy us for all circumstances. If gates were the definitive solution to crossing protection there would never be instances where drivers crash through them on their way to an accident. We applaud the use of ATCS but are not satisfied that even this technology is always an adequate substitution for a grade separation. The sight lines for both train operators and motorists will be severely restricted as compared with sight lines for the remainder of the project. Traffic is already heavy at the proposed crossing and will worsen with construction of the new complex abutting the crossing.

NOBLAG points to other planned construction that will further increase the usage of Del Mar Blvd. at the point of the proposed crossing. Blue Line argues that it is not responsible for traffic generated by future developments unrelated to Blue Line. (R.B. p 38) While Blue Line may absolve itself from this responsibility the Commission may not. Even if the Del Mar Blvd. crossing were marginally safe at present, if we can foresee that the future is perilous, we should not authorize an at-grade crossing.

A decision denying an at-grade crossing at Del Mar Blvd. will not necessitate further separations on the project. This matter was specifically

addressed during the hearings. In response to questions from the ALJ the project manager of Blue Line testified:

Q All right. If the Commission were to deny one of the at-grade crossings in Pasadena advocated by NOBLAG and the project were still going to continue, would there have to be construction of more than that one separation that the Commissioner ordered?

A The spacing between Del Mar and California – longitudinal spacing between them – and between California and Glenarm, in accordance with the analysis I’ve done in my testimony, the “what if” analysis on grade crossing – on grade separation, is sufficient that in my opinion either of those three could be built independent of the other two. (Tr 1702-3)

We find that an at-grade crossing at Del Mar Blvd. will not be safe to the public and the application as currently presented should be denied.

As for the other at-grade crossings contested by NOBLAG we find that the measures proposed by Blue Line will provide adequate safety. The crossings are not skewed, the sight lines are not obscured, and the traffic will not be so drastically changed as to indicate the need for further protection.

We determine that at-grade crossings at California Blvd., Fillmore St., and Glenarm St. will be safe and should be authorized. Separations are not practicable. We determine that an at-grade crossing at Del Mar Blvd. will not be safe and should therefore be denied.

Financing

Blue Line contends that it is constructing the project on a very limited budget and that there is insufficient money to construct any separations that were not in its plan as it was presented to this Commission. Yet it proceeded to commence construction between crossings where we have no jurisdiction and sought permission to construct in the crossings. It continues to seek additional

authority to build its project while the remaining crossings are being considered by this Decision. (Motion dated February 1, 2002) But it alleges that rejection of any of the at-grade crossings would put into jeopardy hundreds of millions of taxpayer dollars already invested in the project. (Tr 824) This is the argument foretold in the beginning of this opinion.

We find this rationale to be disingenuous. Blue Line's budgetary problem does not excuse us from our statutory duty to examine proposed crossings for safety. Blue Line proceeded with the expenditure of funds knowing that there may be objections to some or all of its proposed crossings. It "bet" this Commission would approve everything it proposed, or at least settle for inexpensive fixes. It appears that Blue Line has lost this bet. The bootstrap contentions now before cannot prevail. We should not and will not approve what we believe to be an unsafe condition.

Comments on Proposed Decision

The proposed decision of ALJ Rosenthal in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Commission's Rules of Practice and Procedure. Comments were received on _____.

Findings of Fact

1. Blue Line was established to construct a light-rail project between Los Angeles Union Station in Los Angeles and Sierra Madre Villa Blvd. in Pasadena.
2. The completed project will be turned over to MTA for operation.
3. To complete its project, Blue Line must make numerous street crossings, both separated and at-grade, for which it seeks Commission authority.
4. Blue Line has obtained funds from the Legislature for this project.

5. Blue Line has adopted the "design-build" method, which requires constructing portions of the project before obtaining permission to build all of the proposed crossings.

6. All of the proposed crossing authorizations needed from this Commission have been obtained other than at-grade crossings at Avenues 45 to 59 in Los Angeles, and Del Mar and California Blvds. and Glenarm and Fillmore Sts. in Pasadena.

7. Civic officials and emergency authorities in both of these communities endorse the proposed at-grade crossings.

8. Grade separations are many times more expensive to build than at-grade crossings.

9. Blue Line did not budget for separations at any of the crossings subject to this Decision.

10. Grade separations are safer than at-grade crossings.

11. Public opinion is divided between at-grade and separated crossings.

12. Two residential groups in the Mount Washington neighborhood favor separations at Avenues 45 and 50, but propose conditions if at-grade crossings are authorized.

13. Blue Line proposes to construct 4-quadrant gates, pedestrian swing gates, an automatic traffic control system to regulate motor traffic on nearby streets, install a vehicle detection system signaling a train to stop if a vehicle is in the crossing, change pedestrian crosswalks, engage crossing guards during school hours, change the location of a nearby bus stop, and impose speed restrictions on its trains to provide for safety at Avenue 45.

14. Blue Line proposes to construct 4-quadrant gates, pedestrian swing gates and an automatic traffic control system at Avenue 50.

15. Staff does not believe an at-grade crossing at Avenue 45 is safe, but does not oppose at-grade crossings elsewhere.

16. All interested parties favored eliminating the need to sound a train horn or a whistle every time a train approaches either Avenue 45 or Avenue 50.

17. All interested parties agree that audible devices on crossing gates need not be active after the gates reaches the horizontal position at Avenues 45 and 50.

18. There is a restricted line of sight to trains for motorists at the northeast corner of the Avenue 45 crossing.

19. Traffic analyses of Avenues 45 and 50 do not reveal a large projected increase in usage.

20. Avenue 45 is a preferred route for school children.

21. Avenue 45 cannot be separated without substantial changes to the Southwest Museum Station.

22. Avenue 50 cannot be separated without also separating Avenue 51.

23. There is no opposition to the at-grade crossings at Avenues 51 to 57.

24. Blue Line proposes to run at 20 miles-per-hour between Avenues 51 and 57.

25. Blue Line proposes to obey all traffic lights between Avenues 51 and 57, rather than preempt them.

26. The crossings between Avenues 51 and 57 will not be gated.

27. Blue Line proposes to install 4-quadrant gates, pedestrian swing gates, and an ATCS at Del Mar and California Blvds.

28. A grade separation at Del Mar Blvd. can be constructed without causing separations at nearby at-grade crossings.

29. Blue Line proposes to install a raised median, standard No. 9 gates, and an ATCS at Glenarm St.

30. The ATCS to be employed by Blue Line at various crossings has not yet been developed or tested.

31. Blue Line proposes to close Fillmore St. to motor traffic and install pedestrian swing gates.

32. NOBLAG protests all of the at-grade crossings proposed for Pasadena.

33. Del Mar Blvd. is the most heavily traveled of Blue Line's proposed at-grade crossings.

34. A new project authorized at the Del Mar Blvd. crossing will create 357 apartments, many businesses, and 1,250 to 1,500 parking spaces.

35. The new project will impair the sight line of train operators heading south as they emerge from the project at Del Mar Blvd.

36. There has been no evidence of impaired sight lines at California Blvd., Glenarm St., or Fillmore St.

37. Traffic projections for California Blvd. and Glenarm St. do not require creation of grade separations.

38. The Commission is a responsible agency under CEQA.

39. The environmental documents for the Blue Line only identify and locate the at-grade crossings in the project and do not show grade separation alternatives.

40. The environmental documents do not identify any significant effects attributable to the discretionary approval of at-grade crossings subject to this decision.

Conclusions of Law

1. As a responsible agency the Commission need only make findings on significant environmental effects resulting from its discretionary approvals

identified in the environmental documents of the lead agency. No such significant effects were identified.

2. Practicability embraces more than the concept of whether a crossing can be physically built. When making a judgment about practicability we must consider the effectiveness of safety measures, the analysis of our staff, the opinion of local civic and emergency authorities, the opinion of the public, and the cost of a separation in comparison with an at-grade solution.

3. Separations over Avenues 57 through 45 can be physically built but in our judgment need not be separated.

4. The Commission may order a train not to sound its bell or whistle in a city and may condition the audible warning requirements of GO 143-B and GO 75-C.

5. Separations over Glenarm and Fillmore Sts. and California Blvd. can be physically built but in our opinion need not be separated.

6. Based on the record in this proceeding a separation over Del Mar Blvd. is practicable because Blue Line has not met its very heavy burden of proof that it will be safe without being separated.

7. We cannot abandon our duty to authorize only safe crossings merely because the party proposing a crossing only has funds for an unsafe at-grade crossing.

O R D E R

IT IS ORDERED that:

1. The applications of Blue Line to construct at grade crossings at Avenues 45 through 57, California Blvd., Fillmore St. and Glenarm St. are granted, as conditioned by this order.

2. The application to construct an at-grade crossing at Del Mar Blvd. is denied.

3. Avenue 45 shall be protected by 4-quadrant gates, pedestrian swing gates, an Automatic Traffic Control System (ATCS), a vehicle detection system, and crossing guards during school commute hours. The pedestrian crossings and bus stop on Marmian Way shall be altered to enhance the safety of pedestrians at Avenue 45. Trains shall not travel faster than 20 miles-per-hour across Avenue 45. Train horns shall not be used except in emergencies. Audible warning devices on gates shall cease operations after the gate has reached the “down” position.

4. Avenue 50 shall be protected by 4-quadrant gates, pedestrian swing gates, and an ATCS. Trains shall not operate faster than 20 miles per hour across Avenue 50. Trains horns shall not be used except in emergencies. Audible warning devices on gates shall cease operations after the gate has reached the “down” position.

5. At Avenues 51 through 57 the train shall not operated faster than 20 miles-per-hour across the crossings. Trains shall obey all traffic signals. No gates are required.

6. Glenarm St. shall be protected by standard No. 9 gates, a raised median, pedestrian swing gates, and an ATCS.

7. Fillmore St. shall be closed to motor traffic. Pedestrians shall be protected by pedestrian swing gates.

8. California Blvd. shall be protected by 4-quadrant gates, pedestrian swing gates, and an ATCS.

9. Operation over the project shall not commence until it has been proven to the satisfaction of the Staff that an ATCS has been installed and that it is working properly.

10. An at-grade crossing at Del Mar Blvd. is denied.

11. These proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
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(END OF APPENDIX A)