

Decision 96-09-081 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Incorporate Safety Standards for Rail Fixed Guideway Systems in a General Order.

ORIGINAL

Participants in this proceeding include: Cameron Beach, for the Sacramento Regional Transit District; Brian Cunningham, for San Francisco Muni; Marco Gomez, Attorney at Law, for Bay Area Rapid Transit District; James P. Jones, for United Transportation Union; and Peter Tereschuck, for San Diego Trolley, Inc.; interested parties: Peter G. Fairchild, Attorney at Law, and Donald R. Johnson, for the Safety & Enforcement Division, Rail Transit Safety Section.

OPINION

The Intermodal Surface Transportation Efficiency Act of 1991 required the Federal Transit Administration (FTA) of the United States Department of Transportation to issue a rule requiring the states to oversee the safety of rail fixed guideway systems not regulated by the Federal Railroad Administration. On December 27, 1995, the FTA issued 49 CFR Part 659, Rail Fixed Guideway Systems; State Safety Oversight; Final Rule. The rule, which became effective on January 26, 1996, requires each state to designate an agency to oversee the safety of rail transit systems.¹ Governor Wilson, by letter dated October 13, 1992, designated the Public Utilities Commission as the oversight agency for California. As a minimum, and the FTA emphasizes that this is a minimum, the 2SPS must comply with the American Public Transit Association's (APTA) "Manual for the Development of Rail Transit System Program Plans".

¹ See also, Public Utilities (PU) Code s 309.7

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As the oversight agency for California, the Commission must respond to the requirements in 49 CFR Part 659 to avoid financial penalties that the FTA might otherwise impose on federal funding for California. The Commission must issue rules and regulations for California's rail transit agencies to follow in preparing system safety program plans. These plans must be submitted to the Commission for review and approval. Requirements must be established for internal audits which each rail transit agency must perform each year. Instructions must be prepared for the rail transit agencies to follow when investigating accidents and hazardous conditions. The Commission must review and approve corrective action plans and schedules prepared by the rail transit agencies. The Commission must perform onsite, triennial reviews of each transit agency's safety program. Rules and regulations need to be established governing the procedures to be followed for conducting these reviews. The federal regulations require us to approve each transit agency's system safety program plan before January 1, 1997.

In California, at this time, the final rule applies to the Bay Area Rapid Transit District (BART), the Los Angeles County Metropolitan Transportation Authority (LACMTA), the San Francisco Municipal Railway (MUNI), the San Diego Metropolitan Transit Development Board (MTDB), the Sacramento Regional Transit District (RT), and the Santa Clara County Transit District (SCCTD).

- In compliance with the final rule, we must:
- o Prepare and issue a system safety program standard (SSPS) that establishes the requirements that each transit agency must meet for the preparation of their system safety program plans (SSPP) and implementing procedures. As a minimum, and the FTA emphasizes that this is a minimum, the SSPS must comply with the American Public Transit Association's (APTA) "Manual for the Development of Rail Transit System Program Plans" (with the exception of MUNI, all of the California rail transit properties

- o already have in place SSPP's which APTA has previously approved as meeting the requirements in their manuals
- o By January 1, 1997, review and approve in writing SSPP's covering everything but security for all of the California transit properties, including MUNI's light rail transit system and their cable car system, neither of which have previously been under CPUC jurisdiction.
- o By January 1, 1998, review and approve the security provisions in each California property's SSPP.

Perform an onsite safety review of each transit property at least once every 3 years to determine if the SSPP is being properly implemented, if the SSPP is effectively controlling safety, and if the SSPP needs updating. These audits must be documented in a formal report. Up to now, APTA has been performing this function for most of the U.S. and Canadian rail properties through their Rail Safety Audit Program. With the exception of MUNI, all of the California properties have signed up for the APTA program which costs them \$14,000 per year or \$42,000 for what usually amounts to a 2 person, on-site audit, for one week every 3 years.

- o Require the transit agencies to report accidents in much the same manner as they report them to us now.
- o Investigate accidents and unacceptable hazardous conditions. Now it is permissible for the oversight agency to allow the transit agency to conduct the major portion

DEFINITIONS

2 This Commission has participated in most of these audits as a passive observer. Although we could continue to depend upon APTA to perform the audit function for us under the contracting out provisions of the rule, the relationship between APTA, the transit agencies, and the Commission would have to change dramatically.

of the investigation. In the future, the transit agency will be conducting the investigation on behalf of the oversight agency, and the oversight agency must approve the transit agency's corrective action plan to prevent a recurrence of the accident or to control the hazardous condition. Submit an initial formal report to the FTA identifying the transit agencies we oversee, an annual report summarizing the oversight activities performed during the past year, and accident reports when requested.

In response to the OIR the Commission staff prepared a proposed General Order to meet the FTA's requirements. An initial draft of the proposed General Order was issued for review and comments on May 3, 1996. A second draft incorporating the comments was issued on June 17, 1996. A third draft with changes made to resolve the comments received on the two previous drafts was issued July 12, 1996. Comments to that draft have been incorporated in our General Order, attached as Appendix A.

Analysis

A section by section analysis of the General Order follows:

1. GENERAL PROVISIONS

The General Order applies to all rail fixed guideway systems as defined by the FTA. The Commission may make changes to the General Order as necessary for the purpose of safety, and the requirements for obtaining exemptions or modifications to the General Order are described in this section.

2. DEFINITIONS

The definitions are taken verbatim from the FTA's final rule. Although we could not perform the audit function for us under the provisions of the rule, the relationship between the transit agencies and the Commission would have to change dramatically.

3. REQUIREMENTS FOR SYSTEM SAFETY PROGRAM PLANS

This section describes the minimum requirements that must be included in each rail transit agency's system safety program plan. The basic requirements taken from the FTA's final rule are that each plan must comply with the 23 points covered in a set of guidelines published by the American Public Transit Association and address security as well as safety. In addition, each plan must describe the controls that will be used to maintain communications and liaison with the Commission's staff.

Other requirements contained in this section which are also requirements of the FTA's final rule are:

- Each plan must be submitted to the Commission for review and approval. The Commission staff will perform the initial review and resolve any comments through informal discussions with the respective rail transit agencies. The Commission staff will then prepare a resolution or other order for action by the Commission.

The Commission staff will oversee design, construction, operation, and maintenance at each rail transit agency to confirm proper implementation of the approved system safety program plans.

The Commission staff will conduct formal on-site review of each rail transit agency at least once every three years to evaluate the effectiveness of the agency's system safety program plan. The Commission staff will prepare and submit a report to the Commission for each review which will be used by the Commission to issue a decision to the affected rail transit agency and schedule corrective action plan.

4. REQUIREMENTS FOR INTERNAL SAFETY AUDITS

This section requires each rail transit agency to conduct internal audits to

evaluate compliance and measure the effectiveness of its own system safety program plan. A report covering the audits performed during the preceding year must be prepared by each rail transit agency and submitted to the Commission staff by the 15th of February each year. Commission approval of these reports is not required by the FTA's final rule.

5. REQUIREMENTS FOR REPORTING ACCIDENTS AND UNACCEPTABLE HAZARDOUS CONDITIONS

This section contains requirements taken from the FTA's final rule for reporting accidents and unacceptable hazardous conditions. These requirements are essentially the same as those already established in General Order No. 143-A. The difference is that unacceptable hazardous conditions as well as accidents must be reported to the Commission's staff. Commission approval of these reports is not required by the FTA's final rule.

6. REQUIREMENTS FOR INVESTIGATING ACCIDENTS AND UNACCEPTABLE HAZARDOUS CONDITIONS

As permitted by the FTA's final rule, the General Order allows the investigations to be performed by the rail transit agencies. The Commission staff will oversee the investigations and review each investigation report to confirm that the most probable cause has been correctly identified. The Commission staff must also confirm that an appropriate corrective action plan and schedule have been prepared to prevent recurrence of the accident or unacceptable hazardous condition. The FTA's final rule requires the designated state oversight agency to review and approve each investigation report, corrective action plan, and schedule. The six rail transit agencies in California subject to safety oversight by the Commission prepare approximately 150 such reports, plans and schedules each year.

These reports, plans, and schedules will be submitted to the Commission staff. Pursuant to PU Code § 309.7, we will delegate to the Commission's Safety and Enforcement Division the authority necessary to approve those reports, plans, and schedules that the staff of that division finds acceptable. In cases involving a major accident or a serious safety violation by a transit agency or other situation requiring action by the full Commission, the Commission staff will request the Commission to order an investigation leading to formal action by the Commission.

The FTA final rule contains a provision that permits the States to prohibit investigation reports from being admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report. In keeping with this provision, this section of the General Order contains a requirement to maintain the confidentiality of investigation reports and corrective action plans prepared by the rail transit agencies and submitted to the Commission or its staff. Investigation reports and corrective action plans obtained by the Commission or its staff in confidence from a rail transit agency are "official information". As such, these reports and plans are subject to the privilege provided by Section 1040 of the Evidence Code enabling the Commission to bar them from disclosure. The Commission retains the ability to authorize disclosure under appropriate circumstances.

Findings of Fact

1. The FTA issued a final rule 49 CFR, Part 659 (effective date January 26, 1996) which requires the States to oversee the safety of rail fixed guideway systems not regulated by the Federal Railway Administration.

2. Governor Wilson has designated this Commission to serve as the safety oversight agency for California.

3. On April 10, 1996 the Commission issued an Order Instituting Rulemaking to develop a new General Order containing safety rules and regulations as required by the FTA's final rule.

4. Three drafts of a proposed General Order intended to be responsive to the FTA's final rule have been prepared by the Commission staff and distributed to all interested parties for review and comments. Those comments have been received and considered in preparing the proposed new General Order.

5. The General Order in Appendix A is reasonable.

Conclusions of Law

1. The Commission concludes that the General Order in Appendix A should be adopted.

2. Pursuant to PU Code § 309.7 the authority to approve reports, plans, and schedules concerning accidents and unacceptable hazardous conditions should be delegated to the Commission's Safety and Enforcement Division.

ORDER

IT IS ORDERED that:

1. General Order No. 164 in Appendix A is adopted.
2. The Commission's Safety and Enforcement Division is delegated the authority to approve reports, plans, and schedules concerning accidents and unacceptable hazardous conditions.

Findings of Fact
1. The FTA issued a final rule 49 CFR, Part 229 (effective date January 26, 1996) which requires the states to oversee the safety of rail fixed guideway systems not regulated by the Federal Railway Administration.

3. This proceeding is closed.
This order is effective today.
Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

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General Order No. 164

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
RULES AND REGULATIONS GOVERNING STATE SAFETY OVERSIGHT OF RAIL FIXED GUIDEWAY SYSTEMS

Adopted September 20, 1996. Effective September 20, 1996.
(D.96-09-081 in R.96-04-021)

IT IS ORDERED that the following rules and regulations governing the safety oversight of rail fixed guideway systems, shall hereafter be observed in this State unless otherwise directed by the Commission.

- 1. GENERAL PROVISIONS
 - 1.1 Authority. These rules and regulations are authorized by and implement the provisions of 49 U.S.C. 5330, Section 99152 of the Public Utilities Code, and Title 49 of the Code of Federal Regulations; Part 1659, Rail Fixed Guideway Systems, State Safety Oversight, Final Rule.
 - 1.2 Applicability. These rules and regulations are applicable to all transit agencies operating rail fixed guideway systems in California.
 - 1.3 Additional Rules. The Commission may make such additional rules and regulations or changes to these rules and regulations as necessary for the purpose of safety.
 - 1.4 Exemptions or Modifications. Requests for exemptions from or modifications of these rules and regulations shall contain a full statement of the reasons justifying the request and demonstrating that safety is not reduced thereby. Any exemption or modification so granted shall be limited to the particular matter covered by the request.

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2. DEFINITIONS

2.1 APTA Guidelines means the American Public Transit Association's "Manual for the Development of Rail Transit System Safety Program Plans," published on August 20, 1991.

2.2 Hazardous condition means a condition that may endanger human life or property, it includes unacceptable hazardous conditions.

2.3 Rail fixed guideway system means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is:

- (1) Included in the Federal Transit Administration's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 U.S.C. section 5336); and
- (2) Not regulated by the Federal Railroad Administration.

2.4 Safety means freedom from danger.

2.5 Security means freedom from intentional danger.

2.6 System safety program plan means a document adopted by the transit agency detailing its safety and security policies, objectives, responsibilities, and procedures.

2.7 Transit agency means an entity operating a rail fixed guideway system.

2.8 Unacceptable hazardous condition means a hazardous condition determined to be an unacceptable hazardous condition using the APTA Guidelines Hazard Resolution Matrix (APTA Guidelines, checklist number 7) and regulations.

3. REQUIREMENTS FOR SYSTEM SAFETY PROGRAM PLANS

3.1 Each transit agency shall prepare a system safety program plan. The plan shall conform to the APTA Guidelines and these rules and regulations.

3.2 The system safety program plan shall address the personal security of the transit agency's passengers and employees.

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3.3 The system safety program plan, including any subsequent revision, shall be submitted to the Commission staff for review and approval by the Commission.

3.4 Each transit agency's system safety program plan shall describe the controls used to maintain effective communications and liaison with the Commission staff for reporting and investigating accidents and unacceptable hazardous conditions, submitting corrective action plans and annual internal safety audit reports, and facilitating on-site safety reviews by the Commission staff.

3.5 The Commission staff may perform inspections, investigations, and reviews of the design, construction, operation, and maintenance of each rail fixed guideway system to assess whether the actual safety and security procedures and practices of the transit agency comply with its system safety program plan.

3.6 At least once every three years, the Commission staff shall conduct an on-site review of the implementation of each transit agency's system safety program plan to verify compliance with and evaluate the effectiveness of the plan. The Commission staff may conduct the on-site review with its own personnel or by employing the services of another organization other than the transit agency.

3.7 Following each on-site review, the Commission will issue a decision based upon the Commission staff findings and recommendations, including an analysis of the efficacy of the system safety program plan and the need, if any, for updating the plan.

3.8 Each transit agency shall submit accident and unacceptable hazardous condition reports to the Commission staff. A reportable accident is one which exceeds the thresholds established in the following paragraphs and which is

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- 4. REQUIREMENTS FOR INTERNAL SAFETY AUDITS**
- 4.1 Planned and scheduled internal safety audits shall be performed by each transit agency to evaluate compliance and measure the effectiveness of its system safety program plan.
- 4.2 The transit agency's internal safety audit schedule shall be submitted to the Commission staff before each audit is begun.
- 4.3 Each internal safety audit shall be performed in accordance with a written checklist by personnel technically qualified to verify compliance and judge the effectiveness of the system safety program plan activity being audited. The auditors may be organizationally assigned to the unit responsible for management of the activity being audited, but they must be independent from the first line of supervision responsible for performing the activity being audited.
- 4.4 Each internal safety audit shall be documented in an annual report that covers the audits performed during each calendar year. The annual report shall state the results of each audit in terms of the adequacy and effectiveness of the system safety program plan. The annual report for the internal safety audits performed during the preceding year shall be submitted to the Commission staff prior to the 15th of February each year.
- 5. REQUIREMENTS FOR REPORTING ACCIDENTS AND UNACCEPTABLE HAZARDOUS CONDITIONS**
- 5.1 Each transit agency shall submit accident and unacceptable hazardous condition reports to the Commission staff. A reportable accident is one which exceeds the thresholds established in the following paragraphs and which is

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associated with the operation of rail transit vehicles and other on-track equipment at any location in the system, including at-grade crossings, station platforms, mainline and yard tracks.

5.2 Each transit agency shall immediately notify the Commission staff of the following classes of accidents and unacceptable hazardous conditions by telephone or FAX:

(a) Any event resulting in a fatality or serious injury requiring transportation to a medical facility by ambulance or police vehicle for medical treatment;

(b) Any fire or other hazardous event that requires the evacuation of passengers or requires fire suppression activities conducted by a fire department; and

(c) Any unacceptable hazardous condition which has been identified by the transit agency and which could cause death or injury to passengers or employees if not immediately corrected.

5.3 Each transit agency shall submit written accident and unacceptable hazardous condition reports on forms prescribed by the Commission staff. Such written reports shall be submitted within 30 days after the last day of the month in which the accident occurred or the unacceptable hazardous condition was discovered. Written reports shall be filed for all unacceptable hazardous conditions and the following classes of accidents:

(a) Any accident requiring immediate telephone or FAX notification;

(b) Any derailment or collision between rail transit vehicles, or between rail transit vehicles and other on-track equipment;

(c) Any accident involving impact between rail transit vehicles and motor vehicles, pedestrians or other persons; and

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(d) Any accident which causes property damage in excess of \$100,000.

5.4 Each transit agency shall file a monthly accident, unacceptable hazardous condition, and operational statistical summary report. This report shall be filed on a form prescribed by the Commission staff within 30 days from the last day of the month covered. The monthly summary report shall be filed whether or not any reportable accident occurred or any unacceptable hazardous condition was identified during the month.

6. REQUIREMENTS FOR INVESTIGATING ACCIDENTS AND UNACCEPTABLE HAZARDOUS CONDITIONS

6.1 Each transit agency shall investigate unacceptable hazardous conditions and reportable accidents on behalf of the Commission staff. The Commission staff may also perform separate, independent investigations at its own discretion.

6.2 When investigating an accident that resulted in a fatality or serious injury as defined in 5.2 above, the transit agency shall give prior notice to the Commission staff whenever an accident investigation team or panel is convened to perform interviews, inspections, examinations, or tests to determine the cause of the accident.

6.3 The transit agency's investigation shall be documented in a written report that identifies the most probable cause and any contributing causes of the accident or unacceptable hazardous condition. The report shall also contain or reference a corrective action plan and schedule to prevent a recurrence of the accident or to mitigate the unacceptable hazardous condition.

(c) Any accident involving transit vehicles and motor vehicles, pedestrians or other persons; and

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- 6.4 The transit agency's investigation report and corrective action plan with accompanying implementation schedule shall be submitted to the Commission staff.
- 6.5 The Commission may make such order with respect to the transit agency's or Commission staff investigation as the Commission deems necessary.
- 6.6 Investigation reports and corrective action plans prepared by a rail transit agency and filed with the Commission or the Commission staff shall not be admissible as evidence nor shall they be used in any civil action for damages based on or arising out of matters covered therein unless specifically authorized by the Commission.

Dated September 20, 1996, at San Francisco, California.

/s/ WESLEY M. FRANKLIN
WESLEY M. FRANKLIN
Executive Director

(END OF APPENDIX A)