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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into identification and
mitigation of local safety hazards
on California's railroads

ORIGINAL
FILED
PUBLIC UTILITIES COMMISSION
MARCH 11, 1992
SAN FRANCISCO OFFICE
I.92-03-017

ORDER INSTITUTING INVESTIGATION

I. SUMMARY

This order begins the first of what is expected to be an annual process of identifying and mitigating identified hazards on the nearly 12,000 miles of railroad track in California. It establishes a two-phase process for complying with the mandates of Senate Bill 48 and Assembly Bill 151 that sites found to be local safety hazards on California's railroads and the transportation of hazardous materials on the railroads be identified by July 1, 1992 and that appropriate measures to mitigate or eliminate identified hazards be enacted by January 1, 1993. Phase 1 will focus on the identification of hazards. Phase 2 will focus on eliminating or reducing the hazards identified.

All California railroads under Commission jurisdiction are respondents to this Order Instituting Investigation (OII), although the OII focuses on the larger, Class 1 railroads and on the smaller, shortline railroads that carry hazardous materials or have unusually high accident rates.

II. BACKGROUND

In 1991 the Legislature mandated a new system of annual review of California's railroads for the purpose of identifying local safety hazards and adopting appropriate measures to

mitigate these hazards. Two different bills were enacted, both setting standards and requirements, some of which overlap, for the identification of railroad hazards in the state.

Senate Bill (SB) 48 added sections 7711 and 7712 to the Public Utilities Code (PU Code), which require this Commission to report to the Legislature by July 1, 1992, and each July 1 thereafter on railroad sites in California we find to be hazardous.¹ The report must include: (1) a list of all

1. The full text of PU Code section 7711 provides:

On or before July 1, 1992, and on or before July 1 annually thereafter, the commission shall report to the Legislature on sites on railroad lines in the state it finds to be hazardous. The report shall include, but not be limited to, information on all of the following:

(a) A list, prepared pursuant to Section 59019 of the Health and Safety Code, of all commodities transported on railroad lines in the state that could pose a hazard to the public or the environment in the event of a train derailment or other accident.

(b) A description of the quantities of commodities identified in subdivision (a) that are transported on railroad lines in the state. The commission shall also describe the locations and routes at, and on, which the commodities specified in subdivision (a) are transported. Railroad corporations shall provide to the commission all information necessary to comply with this subdivision.

(c) A list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years. The list shall describe the nature and probable causes of the accidents, if known.

(d) A list of all railroad sites in the state that the commission determines pose a local safety hazard. Factors that the commission shall consider in determining a local safety hazard may include, but need not be limited to, all of the following:

- (1) The severity of grade and curve of track.
- (2) The value of special skills of train operators in negotiating the particular segment of railroad line.
- (3) The value of special railroad equipment in negotiating the particular segment of railroad line.

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commodities transported on California railroads that could pose a hazard to the public or environment in the event of an accident; (2) a description of the transport of these potentially hazardous commodities by quantity, locations and routes; (3) a list of all derailment accident sites in California in the last five years and the causes of these accidents; and (4) a list of all railroad sites that the Commission finds pose a local safety hazard, using at least seven specified criteria and the history of accidents at or near the sites.

Section 7712 requires the adoption of regulations based on these findings by January 1, 1993.² In adopting these

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(4) The types of commodities transported on or near the particular segment of railroad line.

(5) The hazard posed by the release of the commodity into the environment.

(6) The value of special railroad equipment in the process of safely loading, transporting, storing, or unloading potentially hazardous commodities.

(7) The proximity of railroad activity to human activity or sensitive environmental areas.

(e) In determining which railroad sites pose a local safety hazard pursuant to subdivision (d), the commission shall consider the history of accidents at or near the sites. The commission shall not limit its determination to sites at which accidents have already occurred, but shall identify potentially hazardous sites based on the criteria enumerated in subdivision (d) and all other criteria that the commission determines influence railroad safety.

2. The full text of PU Code section 7712 provides:

On or before January 1, 1993, the commission shall adopt regulations, based on its findings and not inconsistent with federal law. The commission may amend or revise the regulations as necessary thereafter, to reduce the potential railroad hazards

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identified in Section 7711. In adopting the regulations, the commission shall consider at least all of the following:

(a) Establishing regulations for the transporting of commodities which the commission has listed pursuant to Section 7711. These standards shall include, but need not be limited to, all of the following:

(1) Requiring railroad operators to maintain on trains easily accessible and identifiable information describing the chemical composition, trade name, potential hazards, and proper emergency response procedures for each category of hazardous commodity specified in subdivision (a) of Section 7711 when loaded, transported, stored, or unloaded on or from their trains.

(2) Requiring railroad operators to maintain, on all trains that carry the commodities specified in subdivision (a) of Section 7711, emergency response telephone and radio contacts for all manufacturers of commodities listed pursuant to subdivision (a) of Section 7711, of all local railroad emergency response agencies on the train's route, for the Office of Emergency Services, and for all applicable federal emergency response agencies.

(3) Requiring railroad operators to post on railroad cars containing commodities identified in subdivision (a) of Section 7711 easily identifiable placards identifying the name, type, and nature of the commodity.

(b) Establishing special railroad equipment standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (d) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

(1) Sizes, numbers, and configurations of locomotives.

(2) Brakes.

(3) Construction of train cars that carry the commodities specified in subdivision (a) of Section 7711.

(c) Establishing special train operating standards for trains operated over railroad sites identified as posing a local safety hazard pursuant to subdivision (d) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

(1) Length, weight, and weight distribution of trains.

(2) Speeds and accelerations of trains.

(3) Hours of allowable travel.

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regulations, section 7112 requires that consideration be given to five specific areas: (1) standards for the transport of identified potentially hazardous commodities, including information maintained on trains, emergency response contacts, and placarding cars; (2) standards for special railroad equipment on hazardous sites, such as locomotives, brakes, and cars carrying potentially hazardous commodities; (3) standards for trains operating at local safety hazard sites, such as train make-up and configuration, train speed and acceleration, and hours of travel; (4) training, personnel, and performance standards for operators of trains over local safety hazard sites; and (5) standards on inspection and reporting for trains operated on local safety hazard sites.

Assembly Bill (AB) 151 added section 765.5 to the PU Code, which requires this Commission to identify track sections that we find pose local safety hazards and report to the Legislature by July 1, 1992.³ This report must include all

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(d) Establishing special training, personnel, and performance standards for operators of trains that travel on railroad sites identified as posing a local safety hazard pursuant to subdivision (d) of Section 7711.

(e) Establishing special inspection and reporting standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (d) of Section 7711.

3. In pertinent part, PU Code section 765.5 provides:

(a) The purpose of this section is to provide that the commission takes all appropriate action necessary to ensure the safe operation of railroads in this state.

(b) Not later than July 1, 1992, and annually thereafter, the commission, consistent with Section 434 of Chapter 13 of Title 45

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sites which are determined to have inordinately high derailment rates. AB 151 further requires that the Commission propose regulations by December 31, 1992 to establish a program to eliminate or reduce the identified local safety hazards. The regulations must include requirements regarding special equipment and operating, inspection, and reporting standards, as well as capital improvements.

III. METHOD OF REVIEW AND ANALYSIS

Taken together, SB 48 and AB 151 have set forth an ambitious agenda for this Commission, our staff and the California railroads in 1992. By July 1 we must review the California rail system to identify local safety hazards, identify all hazardous⁴ materials transported by rail in California, including the quantities and routes of transportation, and list all the derailments within the last five years. Once these tasks are completed, our job turns to determining what regulations are

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of the United States Code, shall identify track sections which it determines pose local safety hazards, and report on those sites to the Legislature. The commission shall include in its report at least all those sites which have inordinately high derailment rates, as determined by the commission.

(c) Not later than December 31, 1992, the commission shall propose regulations it determines would establish a program to eliminate or reduce the local safety hazards identified in the report prepared pursuant to subdivision (b). The regulations shall include requirements relating to special equipment; operating, inspection, and reporting standards; and recommended capital improvements at each site.

4. The list of hazardous materials to be used in reporting to the Legislature is a list now being developed by the Office of Environmental Health Hazard Assessment, pursuant to Health and Safety Code section 59019, which was enacted as part of SB 48.

appropriate to mitigate the hazards identified. Although AB 151 requires only the proposal of regulations by the end of 1992, SB 48 mandates the adoption of regulations by the beginning of 1993. Given the scope and complexity of the task set before us and the fact that SB 48 makes this review of local safety hazards an annual process, we must prioritize our review and the hazards identified to ensure a reasoned and orderly decision making process and an appropriate allocation of the resources of this Commission, other involved state agencies, and the California railroads.

With this OII we begin a two-stage process that we anticipate becoming an annual event. The first stage will be the identification of hazards, which is to be completed by July 1, 1992. The largest task in this first stage is the identification of local safety hazards throughout the California railroad system. The second task is the identification of potentially hazardous materials, to be enumerated by the Office of Environmental Health Hazard Assessment, being transported by rail in the state. We foresee a potential difficulty in meeting the July 1 deadline in completing this portion of the review, because the list of hazards is currently under development and is not due out until July 1, 1992.

The second stage of this process will be the identification and adoption of appropriate measures to mitigate or eliminate the identified hazards. These measures must be consistent with federal law, as recognized by PU Code section 7712.

In today's order we outline the process to be followed in this proceeding, recognizing that this is an unusual proceeding covering a wide range of complex issues and that flexibility must be granted to ensure that the process remains workable as our staff, other parties, and the assigned Administrative Law Judge (ALJ) proceed ahead with the case. In addition, the short time available for the first phase (the identification of hazards) dictates that informal resolution of

issues and disputes be used as much as possible, provided that this accelerates rather than hinders the identification of hazards.

There are 39 railroads in California, four of them larger, Class 1 railroads and 35 shortline, Class 2 and 3 railroads. In total there are approximately 12,000 miles of railroad track under this Commission's jurisdiction. It is unrealistic to suppose that all of this track can be completely analyzed for hazards by July 1 of this year, yet identification of the worst hazards should be achievable, as is laying the groundwork for a more thorough review of all track in future years.

For 1992 our first priority will be examination of potential hazards on all of the Class 1 railroads and on any shortline railroads that carry hazardous materials. Accordingly, all California railroads are respondents to this OII. However, the information initially requested of shortline railroads will be directed toward discovering which of them carry hazardous materials or have unusually high frequencies of derailments or accidents. The shortlines thus identified will be grouped with the Class 1 railroads for investigation in this 1992 OII. We anticipate that in subsequent years all shortline railroad track will be fully investigated.

A. Phase 1 - Hazard Identification

In order to complete the task of hazard identification by July 1, the full cooperation of the railroads with our staff is required. At the outset, a great deal of information must be gathered, and based upon that information an assessment of potential hazardousness must be made. To facilitate this process, this order sets forth an initial requirement for the provision of information by the railroads. Our Safety Division staff may find additional information necessary, and railroads

are directed to promptly and fully comply with any such further requests.

At this juncture, some mention of the federal preemption of state jurisdiction over some aspects of railroad safety regulation is appropriate. The Federal Railroad Safety Act of 1970 preempts states from regulating when a federal "rule, regulation, order, or standard covering the subject matter of such state requirement" has been adopted. 45 U.S.C. section 434. Where there is such a federal rule, the state may still enact more stringent rules that are "necessary to eliminate or reduce an essentially local safety hazard," provided that the state rule is not incompatible with federal law or regulations and does not unduly burden interstate commerce. Id. (emphasis added). Whether or not a particular condition or location would meet the federal definition of an "essentially local safety hazard" within the meaning of the Federal Railroad Safety Act should not be an issue in Phase 1 of this proceeding. In this phase California local safety hazards will be identified, but no action to regulate them will be taken. Thus the question of whether a hazard is an "essentially local safety hazard" that falls within the federal preemption exemption would only arise in Phase 2, when proposals to regulate the identified California local safety hazards are considered.

1. Procedure for Phase 1

To enable this investigation to go forward in a timely manner the respondent railroads are required to provide appropriate and complete information and analysis about their systems. The Safety Division staff is charged with compiling a list of hazards recommended to be designated as California local safety hazards, together with the reasons for its recommendations. Any respondent or interested party may also supply a recommended list of local safety hazards, together with the reasons for its recommendations.

The assigned ALJ may set dates and procedures for the filing or service of such lists and recommendations in the form of written comments or as testimony and may, if necessary, schedule hearings. However, this proceeding must proceed expeditiously, particularly in Phase 1, and we direct that workshops and settlement conferences be considered and utilized where feasible to narrow the scope of issues and, if possible, reach a settlement on the identification of the California local safety hazards.

Unlike an enforcement OII which examines compliance with Commission rules and may assess penalties against respondents, this OII, particularly in Phase 1, is an information gathering and policy making tool. Thus, the common practice in enforcement proceedings of placing the burden of proof on the staff rather than the respondent is not strictly applicable. In this circumstance, the burden of proof lies with the proponent of any recommendation.

In order for Phase 1 to be completed by July 1, 1992, a decision will have to be made by the Commission in June. Thus any workshops, hearings, and settlement discussions will need to be completed in early May to permit the assigned ALJ to formulate a proposed decision for our consideration in June. Again, we emphasize the importance of cooperation and flexibility among all parties in order to meet the schedule set for us by the Legislature. The list of required information set forth below is intended to speed the information process and expedite analysis and formulation of recommendations by all participants in the proceeding.

2. Required Information for Phase 1

For all information required to be provided by the railroads in this order, the respondent railroads shall provide two copies to the Commission's Safety Division staff (unless staff consents to the provision of the information in

computerized or other format) and one copy to the Commission's Legal Division.

a. Derailment and Other Accident Frequency

The Commission already keeps some statistics on railroad accidents. All regulated railroads provide us with a list of their "reportable" accidents each year.⁵ Accidents, including derailments, of a lesser magnitude are not typically reported to us, but they may be indicators of problem areas.

Therefore, all respondent railroads are directed to compile and provide, within three weeks of the issuance of this OII, a list of all accidents, including derailments, within California during calendar years 1987 through 1991 that were previously unreported to this Commission. If records are not kept for all such accidents, they must provide a list of whatever accidents or derailments have been recorded, together with an explanation of what criteria are used in determining whether records are made and kept for accidents and derailments. The list of accidents shall include a description of each accident, including the location date, nature or type of accident, and the probable cause of the accident.

Once these reports are filed, the Safety Division staff is directed to identify the shortline railroads with high accident frequency. Within five weeks after the issuance of this OII, the staff will serve this information on all parties and the ALJ, together with a recommendation based on this information regarding which of the shortline railroads should be included

5. The FRA defines accidents that are reportable at 49 C.F.R. section 225.5(b). In general, a reportable accident is one: (1) between vehicles at a grade crossing, (2) causing more than \$6300 damage to specified railroad property or (3) causing death or serious personal injury.

with the Class 1 railroads for the 1992 local safety hazard investigation. The affected shortlines and any other party will have ten days to respond to the staff's recommendation, following which the assigned ALJ will make a determination by ruling as to which of the shortlines shall be included with the Class 1 railroads in this year's investigation on the basis of accident frequency.

b. Hazardous Materials Transportation

All California railroads are directed to provide the following information within three weeks of the issuance of this OII:

- (1) A list of each substance which is contained in the lists of hazardous materials set forth in paragraph (2) below and which was transported in California by the respondent railroad within calendar years 1990 or 1991. The list shall include: (a) the name of the substance, giving both the common name and the chemical name, (b) the number of times the commodity was transported and the quantity transported each time, and (c) the route and track segment along which the commodity was transported.
- (2) The lists to be used are:
 - (a) The Department of Transportation list, codified at 49 Code of Federal Regulations (CFR) 172.101.
 - (b) The Nuclear Regulatory Commission list, codified at 10 CFR Part 20, Appendix B.
 - (c) The Director of the California Department of Industrial Relations list, codified at 8 California Code of Regulations 339.
 - (d) The marine pollutant list, currently proposed for adoption by the Department of Transportation, published at 57 Federal Register, No. 21, p. 3854.

This list includes materials identified as marine pollutants by the International Maritime Organization.

- (3) A list of all hazardous material releases in California for calendar years 1987 through 1991, including location, type of shipping container or car involved, and a description of the impact of the release on the immediate and surrounding environment. This list must include all materials on the DOT list at 49 CFR 172.101, and railroads shall provide information for materials on the other three hazardous materials lists if available.

Any shortline which has carried any of the types of hazardous materials on the four lists in paragraph (2) above within California during calendar years 1990 or 1991 will be included with the Class 1 railroads in this 1992 local safety hazard investigation.

c. Other Local Safety Hazard Information

No simple formula for identifying a local safety hazard has yet been developed. The Legislature, in SB 48, identified a number of criteria that the Commission must consider in determining whether a local safety hazard exists. At the outset of this process, it appears that there are some additional factors worthy of consideration as well, and it is to be expected that as the process is underway further criteria may be identified as appropriate for consideration. No matter what factors are considered, the determination of whether a specific condition or location presents a local safety hazard will ultimately be a matter of informed judgment. We anticipate that our Safety Division staff, the railroads, and ultimately the assigned ALJ will carefully balance and consider the information

presented in this proceeding in formulating their recommendations to us as to what should be identified as a local safety hazard.

As noted above, this OII is but the first year's comprehensive examination of potentially hazardous sites on California's railroads. We hope the railroads will join with our staff in searching for analytic methods that will reliably identify local safety hazards before accidents occur, so that appropriate steps can be taken to mitigate such hazards and prevent accidents. Accordingly, part of the information we require in this OII is the railroads' own risk assessment programs, system safety analysis, or similar reviews of their operation to identify and mitigate risks. We anticipate that such analyses will serve critical function in hazard identification, particularly in the years to come.

Within four weeks of the issuance of this OII, all Class 1 railroads and all shortlines that carried hazardous materials within calendar years 1990 or 1991 shall provide the following information for their railroad track within California. Shortlines grouped with the Class 1 railroads due to accident frequency shall provide the information within two weeks of the issuance of the ALJ ruling determining their grouping:

- (1) Copies of the railroad's System Safety Plan or other similar related material.
- (2) Copies of any train accident risk assessments or train accident risk management plans currently used or planned for used by the railroad.
- (3) For all segments of track: (a) descriptive specifications for grade, curvature, rail, ties, both as currently in place and as existed back through 1976 and (b) FRA track class.

- (4) For any sites on which the railroad imposes operational limitations on certain grade territory and track locations such as, but not limited to lowered authorized speeds, lowered tonnage, locomotive helper requirements, train make-up, locomotive and car restrictions:
 - a. A list of such locations and the operational limitations in effect there.
 - b. The criteria used in selecting the locations and operational limitations and the reasons for the selection of these criteria.
 - c. The threshold values used to impose operational limitations.
- (5) Copies of all written rules, procedures or programs that govern train dispatchers, operating personnel, maintenance of way and maintenance of equipment personnel when advised of a derailment or hazard material incident.
- (6) Copies of the operating personnel training programs, certification procedures or other means of qualifying an operating employee to operate in a particular region, district or segment of track. Include with this material information conveying names and location of instructor/examiner personnel.
- (7) Copies of the current operating personnel efficiency test program.

- (8) A list of all trackside defect detectors which includes subdivision and milepost location, type and placement methodology.
- (9) Copies of the carrier policy for calibration and placement of each type of detector.
- (10) Copies of the system maps prepared pursuant to P.U. Code 7673 in 1991 and any available 1992 update.
- (11) Copies of any assessments made to determine the proximity and density of human populations, and the proximity to sensitive environmental areas.
- (12) The total number of trains and total gross tons for each rail segment for each calendar year 1987 through 1991, together with a description of how this information was derived.

B. Phase 2 - Mitigating Measures

The experience of completing Phase 1 should provide useful information for the structuring of Phase 2, in which potential rules to mitigate the identified hazards will be considered. Therefore, we will leave the structuring of this phase largely undecided today, with the expectation that our decision in Phase 1 may provide some structure for Phase 2, which would be further refined by proposals of our staff, other parties and the rulings of the assigned ALJ as Phase 2 gets underway.

One observation about Phase 2 does seem timely, however. Depending on how many California local safety hazards are identified in Phase 1, there may be a need to prioritize the seriousness of identified hazards or the need for immediate mitigation or elimination of the hazard in order for Phase 2 to be completed by the end of the year. Our emphasis should be on

identifying and correcting the most serious problems first, leaving less pressing problems to future years. This does not mean that all safety hazards are not of grave concern, but practical realities and concern for the safety of the public and railroad employees demand that identified hazards be dealt with as far as possible in the order of their seriousness.

III. CONCLUSION

We share the Legislature's concern about ensuring the safety of California's railroads, and this order is intended to initiate the process of identifying and correcting safety hazards both expeditiously and carefully. Completing the tasks we have set for 1992 will require the best efforts of our staff, the regulated railroads, and other governmental agencies, all of whom we are sure share our concern for safety.

Therefore, IT IS ORDERED that:

1. An investigation is instituted into the identification of local safety hazards on California's railroads and potential means of eliminating or reducing such hazards.

2. All California railroads are respondents to this order instituting investigation. The Class 1 railroad respondents are listed in Appendix A to this order. The Class 2 and 3, or shortline, railroad respondents are listed in Appendix B to this order.

3. All respondents are directed to provide the required information listed in the body of this OII, in the time and manner prescribed therein. Specifically:

a. The required information on accident frequency shall be provided within three weeks of the date of this order.

b. The required information on hazardous materials transportation shall be provided within three weeks of the date of this order by shortline railroads that, during 1990 or 1991,

carried in California any of the hazardous materials in the lists identified in the body of this OII and by all Class 1 railroads.

c. The other required local safety hazard information shall be provided within four weeks of the date of this order, except that any shortlines grouped by ALJ Ruling with the Class 1 railroads on the basis of accident frequency shall have until two weeks after the date of the ALJ Ruling to provide the information.

d. Respondents shall provide two copies of the required information to the Safety Division staff (unless staff consents to an alternate method of providing the information) and one copy to the Legal Division.

4. Within five weeks of the date of this order, the Safety Division staff shall review the accident history of the shortline railroads and serve upon all parties and the ALJ a recommendation regarding which of the shortline railroads should be grouped with the Class 1 railroads on the basis of accident frequency for the purposes of this investigation. Affected shortlines and other parties shall have ten days to serve on all parties and the ALJ a response to the staff's recommendation. The assigned ALJ shall determine by ruling which of the shortlines are to be grouped with the Class 1 railroads on the basis of accident frequency.

5. In order to expedite this proceeding and meet the statutory deadlines, particularly for Phase 1, workshops, settlement conferences, and other means of alternate dispute resolution are encouraged.

6. Due to the short time available to complete this investigation and the seriousness of the safety concerns to be addressed, this order shall be effective today.

7. The Executive Director shall serve this order on all respondents by certified mail.

8. The Executive Director shall serve this order by regular mail on the potential interested parties listed in Appendix C. These potential interested parties shall not be deemed parties to the proceeding unless they enter an appearance

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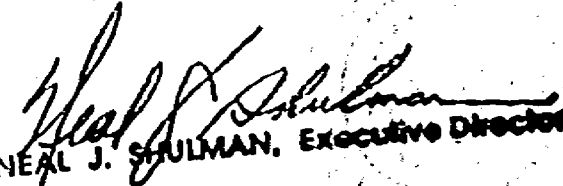
in accordance with the Commission's Rules or Practice and Procedure or are otherwise accorded party status by the assigned ALJ or Commissioner.

This order is effective today.

Dated March 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. STULMAN, Executive Director

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APPENDIX A

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