



**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider  
Roadway Worker Protections by Transit  
Agencies in California.

Rulemaking 09-01-020  
(Filed January 29, 2009)

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling follows a review of the proceeding to date by the assigned Commissioner Timothy Alan Simon and the assigned Administrative Law Judge (ALJ) Kimberly H. Kim. In accordance with Rule 7.3 of the Commission's Rules of Practice and Procedure,<sup>1</sup> this ruling presents and confirms the scope of the proceeding, including an updated proceeding schedule.

**1. Background**

On January 29, 2009, the Commission issued Order Instituting Rulemaking (OIR) 09-01-020, to determine (1) whether current protections for rail transit agency roadway workers are adequate, (2) whether the State of California should implement a General Order implementing new rules for rail transit agency protection of maintenance-of-way, track, signal, operating employees, and others engaged in roadway work, and (3) if new protections are needed, a description of

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<sup>1</sup> All subsequent references to Rule or the Rules are to the Commission's Rules of Practice and Procedure, Chapter 1, Division 1 of Title 20 of the California Code of Regulations. The current version of the Rules is available on the Commission's website: [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

the protections to be required by rail transit agencies and included in the General Order.

Pursuant to Rule 7.1(d), the OIR included a preliminary scoping memo which sought comments from the parties as to the following issues:

- Is a General Order protecting rail transit roadway workers necessary, and if so, what provisions should be included in the General Order?
- What are the protections currently provided roadway workers by California rail transit agencies?
- Are rail transit roadway workers adequately protected from being injured by moving trains or on-track equipment during the course of their employment activities?
- What protections should be employed by rail transit agencies to prevent unnecessary risks and injuries to roadway workers?
- If additional protections are warranted, what time frames are reasonable in implementing a General Order for the protection of rail transit roadway workers?
- If additional protections are warranted, how should they be described in the General Order?

In order to adequately address these issues, we sought specific information from the rail transit agencies under our authority pursuant to California Public Utilities Code Section 99152 and 49 C.F.R. Part 659, regarding their existing protections for employees working on, or adjacent to, track and roadway. We also sought their recommendations for improving these protections, along with recommendations from the employees engaged in such work, and their collective bargaining representatives. In addition, we sought comments from the public, the industry in general, and industry experts, regarding improved protections to reduce the risk of injury to roadway workers employed by California rail transit agencies.

The Commission received responses to and comments on the OIR from numerous parties. From February through April 2009, we received filed responses from the San Francisco Bay Area Rapid Transit District, Sacramento Regional Transit District, Los Angeles County Metropolitan Transportation Authority, Santa Clara Valley Transportation Authority, San Diego Trolley, Inc., and San Francisco Municipal Transportation Agency to the request for information sought pursuant to the OIR, and the comments on the OIR.<sup>2</sup> Service Employee International Union SEIU 1021, BART Chapter also filed comments on the OIR.<sup>3</sup>

On July 6, 2009 and November 12, 2009,<sup>4</sup> ALJ Kim issued rulings revising the proceeding schedule based upon a showing by the Commission's Consumer Protection and Safety Division (CPSD) that the voluminous amount of filings containing detailed information, and the dense and broad nature of the comments received in this proceeding necessitated schedule revisions so that the CPSD would have an adequate opportunity to prepare a thorough recommendation. Throughout the proceeding, the CPSD worked diligently on preparing the staff recommendation on the OIR.

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<sup>2</sup> These comments may be accessed and reviewed on the Commission's website.

<sup>3</sup> SEIU 1021's comment on the OIR was late-filed on April 17, 2009, with the permission of the assigned Administrative Law Judge Kim and may be accessed and reviewed on the Commission's website.

<sup>4</sup> On November 12, 2009, a ruling revising proceeding schedule was issued and was immediately superseded by a subsequent ruling correcting the proceeding schedule. Such readings may be accessed and reviewed on the Commission's website.

On January 15, 2010, the CPSD submitted the Staff Report and Recommendation (SRR) to ALJ Kim.

On January 27, 2010, ALJ Kim issued a ruling directing the parties to review and file comments on the SRR. Parties have since filed comments as directed by ALJ Kim's January 27, 2010 Ruling, and the SSR has been taken under advisement, along with the parties' comments.

## **2. Issues Within Scope**

Upon evaluation of the comments filed by the parties, we confirm the original scope of this proceeding as outlined in the OIR and identified earlier in today's ruling.

All of these issues are addressed in CPSD's SRR and the comments filed in this proceeding, and all issues are all under review.

## **3. Proceeding Schedule**

Pursuant to Public Utilities Code Section 1701.5, the Commission must resolve the issues raised in a rulemaking proceeding within 18 months of the issuance of the scoping memo and ruling in that proceeding. Given the highly detailed and substantial nature of the information, comments, and SRR, it is anticipated a thorough review of this information will require another 60-90 days, with a proposed decision following soon thereafter. In this regard, today's scoping memo and ruling, pursuant to § 1701.5(b), specifies that this proceeding will remain open through the end of December 2010 in order to enable the Commission to effectively and thoughtfully evaluate and address all of the issues involved. The timeline for the resolution of these issues, as outlined below, is within the 18-month period, as specified in Public Utilities Code Section 1701.5:

Event	Date
Proposed Decision	October – November 2010

The adopted schedule may be modified by the assigned ALJ as necessary for the reasonable and efficient conduct of this proceeding.

#### **4. Need for Evidentiary Hearing**

Today’s scoping memo ruling adopts a procedural schedule that does not include a formal evidentiary hearing. Should this determination change, the assigned Commissioner will issue a revised scoping memo ruling. It is anticipated that the record of this proceeding will be comprised of all documents filed and served on the parties.

#### **5. Category of Proceeding**

In the Rulemaking issued on January 29, 2009, the Commission preliminarily determined that this proceeding should be categorized as “quasi-legislative,” as that term is defined in Pub. Util. Code § 1701.1(c)(1). No party raised objections to this preliminary categorization in comments. Today’s ruling confirms this categorization. As set forth in Rule 7.6, the determination as to category is subject to appeal.

#### **6. Respondents**

For purposes of this proceeding, we consider as respondents all California rail transit agencies as defined by General Order 164-D, Sections 2.15 and 2.16.

#### **7. Service List and Service**

The official service list for this proceeding is posted and available on the Commission’s website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Parties should ensure they are using the most up-to-date service list by checking the Commission’s website

prior to each service/filing date. While all respondents identified in the OIR will be bound by the outcome of this proceeding, only those who notify us that they wish to be on the service list will be accorded service by others until final rules are proposed and/or a final decision issued.

We welcome and invite broad participation in this proceeding. All persons or entities seeking to be added to the service list, including respondents, should inform the Commission's Process Office no later than 20 days after the mailing date of this scoping memo and ruling, via email (Process\_Office@cpuc.ca.gov) or by postal mail (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). To be included on the service list for this proceeding, the request to the Process Office must include pertinent information such as:

- Name and party represented, if any
- Address
- Telephone number
- Email address
- Request for party, state service or information only status.<sup>5</sup>

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<sup>5</sup> Party status is for those planning to actively participate in this rulemaking through, at a minimum, submission of written comments on the questions raised in the Preliminary Scoping Memo. State service status is for employees of the State of California who will not be submitting comments. Information Only status is for those who wish to follow the proceeding and receive documents associated with it, but who will not be actively participating.

We encourage electronic filing in this proceeding. Electronic filings<sup>6</sup> should be made according to Rule 1.10 and Resolution ALJ-188. Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned Administrative Law Judge Kimberly H. Kim ([kk2@cpuc.ca.gov](mailto:kk2@cpuc.ca.gov)). Electronic mail should be transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing with the Commission's Docket Office. Parties can find information about the electronic filing of documents with the Commission's Docket Office at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling).

## **8. Public Advisor**

Any person or entity interested in participating in this rulemaking as a party who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in San Francisco at (415) 703-2074 or (866) 849-8390, or email [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

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<sup>6</sup> Rule 1.10(b) provides that "by providing an e-mail address for the official service list in a proceeding, a person consents to e-mail service in any proceeding in which the person is on an official service list."

## 9. Ex Parte Communications

This proceeding is categorized as a quasi-legislative proceeding; thus, *ex parte* communications are allowed without restrictions or reporting requirements. (Pub. Util. Code § 1701.4(b); Rule 8.2.)

Therefore, **IT IS ORDERED** that:

1. The scope of this proceeding is set forth in Section 2, above.
2. The schedule for the proceeding is set forth in Section 4, above, subject to change by subsequent ruling by the assigned Commissioner and/or the assigned Administrative Law Judge.
3. The schedule for the proceeding set forth in Section 4, above, does not anticipate formal hearings. Should this determination change, the assigned Commissioner will issue a revised scoping memo.
4. This proceeding is categorized as “quasi-legislative,” as that term is defined in Pub. Util. Code § 1701.1(c)(1).

Dated July 30, 2010, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON  
Timothy Alan Simon  
Assigned Commissioner

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated July 30, 2010, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

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

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

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