

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
Whether to Adopt, Amend, or Repeal
Regulations Governing Safety Standards for
the Use of 25 kV Electric Lines to Power
High Speed Trains.

Rulemaking 13-03-009
(Filed on March 21, 2013)

**DECISION ADOPTING NEW GENERAL ORDER 176 SETTING SAFETY
STANDARDS FOR HIGH SPEED RAIL TRAINS**

Summary

This decision adopts a settlement (Settlement) of the rulemaking procedure establishing rules for the operation of Overhead 25 kilovolt (kV) Alternating Current Railroad Electrification Systems for a High Speed Rail System. The Settlement is embodied in a settlement agreement (Settlement Agreement) which is attached to this decision as Attachment A, and includes, as an appendix, a new proposed General Order (Proposed GO), which this decision adopts as GO 176.

The settling parties are the California High-Speed Rail Authority (Authority), the Commission's Safety and Enforcement Division (SED), Union Pacific Railroad Company, BNSF Railway Company, the Joint Utilities (Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas and Electric Company, Los Angeles Department of Water and Power, Sacramento Municipal Utility District and East Bay Municipal Utility District), the Communication Infrastructure Providers (AT&T California and AT&T Mobility Wireless Operations Holdings, Inc.,

California Cable and Telecommunications Association, CTIA – The Wireless Association), and Peninsula Corridor Joint Powers Board. The Proposed GO establishes detailed operating rules and safety standards for the safe operation of high speed rail trains in California. This is an uncontested all-party settlement. All settling parties have agreed to the terms of the Settlement and have executed the Settlement Agreement.

1. Procedural Background

On October 18, 2012, the California High Speed Rail Authority (Authority) filed a Petition to Institute Rulemaking pursuant to Section 1708.5 of the California Public Utilities Code in order to establish safety standards for the 25 kilovolt (kV) alternating current (AC) railroad electrification system that will be constructed and operated by the Authority in California. The Commission granted the Authority's petition and on March 28, 2013 issued an Order Instituting Rulemaking in this proceeding. Pursuant to the August 1, 2013 Assigned Commissioner's Preliminary Scoping Ruling, interested parties participated in a series of Technical Panel workshops. The five Technical Panel workshops occurred at locations in Northern and Southern California, over a total of 11 days. The Safety and Enforcement Division issued a Technical Panel Report on December 30, 2013, and parties filed comments and reply comments on the Technical Panel Report in February, 2014. Upon review of the comments and reply comments on the Technical Panel Report, the Assigned Commissioner issued a Final Scoping Ruling on July 18, 2014, that eliminated the final workshop phase of the proceeding and scheduled an evidentiary hearing on the remaining disputed issues for January 26, 2015. In light of the Settlement, the evidentiary hearing was replaced by a hearing on the Settlement.

Since shortly after the issuance of the Final Scoping Ruling in July 2014, the settling parties have been engaged in settlement discussions. Early meetings involved the Authority and a single party or group of parties with a common interest in a particular set of issues. These more focused discussions helped resolve many questions, and were followed by productive meetings involving all interested parties.

Pursuant to Rule 12.1(b) of the Commission's Rules of Practice and Procedure, the Authority issued a notice on November 17, 2014, notifying all parties of record to this proceeding of an all-party settlement conference to discuss settlement of all outstanding issues. This all-party settlement conference took place on November 25, 2014 in San Francisco. The parties held a follow-up teleconference on December 11, 2014, and a second all-party settlement conference in Los Angeles on December 15-16, 2014. As a result of the efforts described above, the settling parties have jointly agreed upon the Proposed GO (appended to the parties' Settlement Agreement).

2. Terms of Settlement

Through the Technical Panels and the settlement process described above, the Settling Parties have jointly developed the rules proposed in the Proposed GO appended to the settlement agreement approved by this decision. As clarified by the Assigned Commissioner's November 24, 2014 Ruling Granting Motion to Amend Scoping Ruling, the scope of this proceeding and the scope of the Proposed GO is limited to the 25 kV electrification systems constructed in the State of California serving a high-speed rail passenger system ("HSRS") capable of operating at speeds of 150 miles per hour or higher, located in dedicated rights-of-way with no public highway-rail at-grade crossings and in which freight operations do not occur. As stated in Rule 1.1 of the proposed GO, the

purpose of the GO is to establish rules that will “promote the safety and security of the general public and of persons engaged in the construction, maintenance, and operation of a 25 kV electrified HSRS.”

2.1. Summary of Proposed General Order

Section 1 states the purpose of the rules contained in the GO: to address the design construction, operation of a 25 kV overhead electrification system in a high speed rail environment. It addresses the application of these rules, encourages parties in a cooperative effort to identify and mitigate any potential impacts of the system, and establishes a dispute resolution procedure.

Section 2 is a definition section.

Section 3 is a system description and includes a simple illustration of the three parts of the 25 kV overhead electrification system. Those parts are the overhead contact system, the parallel feeders, and the traction power return system.

Section 4 outlines the performance requirements of the high speed rail system, the operating conditions in which the 25 kV system can safely operate, and the climatic and geographic parameters on its operation.

Section 5 addresses clearances and protection. It has rules for the safety of the public and the workers in and around the 25 kV system through the provision of safe distances or barriers or screens. It addresses the interaction of the high speed rail system with overhead and underground utilities and nearby vegetation. It deals with rail vehicle and structure sizes and contains provisions for safe installation and operation of adjacent structures and signage provisions.

Section 6 deals with grounding and bonding. There are rules addressing wayside metallic parts in adjacent facilities and limitations on touch potentials for protection of workers and the public.

Section 7 deals with the strength requirements for the components of the system and provides for minimum safety factors.

Section 8 establishes safe working practices. It establishes provisions for safe rules and training, and how to limit the access to energized parts in the right-of-way.

Section 9 deals with recordkeeping incident reporting and investigation.

3. Standard of Review

In order for the Commission to approve a proposed settlement, the Commission must be convinced that the parties have a sound and thorough understanding of the subject matter, the underlying assumptions, and the data included in the record. Pursuant to Rule 12.1(d), the Commission will only approve settlements if the settlement is reasonable in light of the whole record, consistent with the law, and is in the public interest.

As the United States Court of Appeals for the Ninth Circuit has observed, in evaluating a settlement the agreement must stand or fall on its own terms, not compared to some hypothetical result that the negotiators might have achieved, or that some believe should have been achieved:

Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion. (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Based upon our review of the prepared testimony and the Technical Panel reports, we find that the parties to the settlement had a sound and thorough understanding of the underlying assumptions and data included in the record

sufficient to enable competent and well-prepared parties to make informed choices in the settlement process.

4. Required Findings – Rules 12.1(d) and Rule 12.5

a. Reasonable in Light of the Record as a Whole

As shown by the contents of the proposed GO, the proposed settlement resolves all contested issues between the HSRA and the protesters in a manner that is acceptable to the Commission's Safety and Enforcement Division. Through the workshop process all parties have been afforded an opportunity to express their concerns and the resulting Proposed GO reflects compromises agreed to by all parties in the interest of facilitating the construction of the high speed rail system.

b. Consistent with law

All affected parties had notice and an opportunity to be heard. The workshop process was overseen by the assigned Administrative Law Judge (ALJ) who was available throughout the process to rule on contested matters. All proceedings were in accordance with the Public Utilities Code and the Commission's Rules of Practice and Procedure.

c. In the public interest

The high speed rail project is a priority of the state and setting safety standards for the high speed rail train is an integral part of that project. The settlement removes a major barrier to commencement of construction of the high speed rail train by creating a general order that not only governs this project but any future high speed rail construction in California.

5. Environmental Considerations

The California Environmental Quality Act (CEQA)^[1] applies to any project that has a potential for resulting in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment unless the project is exempt from CEQA by statute or regulation.^[2] Proposed G.O. adopted by today's decision is exempt from CEQA pursuant to Section 15378 of the CEQA Guidelines^[3] because it is not a "project" under CEQA and will not have any significant impacts on the environment.

The Commission is the lead agency under CEQA with respect to the regulations adopted by today's decision. We find that all of the adopted regulations are exempt from CEQA pursuant to one or more the following statutory exemptions or categorical exemptions in the CEQA guidelines:

- The adopted regulation allows for the operation, repair, or maintenance of existing electric utility and CIP facilities, and involves negligible or no expansion of an existing authorized use. ([14 Cal. Code Regs., Section 15301\(b\).](#))
- The adopted regulation allows for the restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, and involves negligible or no expansion of an existing authorized use. ([14 Cal. Code Regs., Section 15301\(d\).](#))
- The adopted regulation allows for the maintenance of existing landscaping and native growth, and involves

[1] CEQA is contained in [Cal. Pub. Res. Code § 21000](#) et seq.

[2] [14 Cal. Code Regs., Section 15378.](#)

[3] The CEQA guidelines are set forth in [14 Cal. Code Regs., Section 15000](#) et seq.

negligible or no expansion of an existing authorized use.
([14 Cal. Code Regs., Section 15301\(h\).](#))

- The adopted regulation allows for minor alterations of land that provide for fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, and will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters.
([14 Cal. Code Regs., Section 15304\(i\).](#))
- The adopted regulation involves the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment. ([14 Cal. Code Regs., Section 15378\(b\)\(4\).](#))
- The adopted regulation involves the establishment, modification, structuring, restructuring, or approval of rates or other charges for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas. (Pub. Res. Code § 21080(b)(8).)
- The adopted regulation will not have a potentially significant impact on the environment and is therefore not a “project” as defined by CEQA in Pub. Res. Code § 21065 and [14 Cal. Code Regs., Section 15378\(a\).](#)
- The regulation continues provisions which were adopted in D.09-08-029, or which are very similar to those adopted in D.09-08-029, wherein it was determined that CEQA did not apply to the adopted measures. (D.09-08-029 at 7.)

6. Submission

The motion to adopt a settlement was filed on January 23, 2015. A hearing on the proposed settlement, attended by all parties, was held on January 26, 2015. The matter is deemed submitted as of January 26, 2015.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and ALJ Karl Bemesderfer is the presiding officer.

8. Comments on Proposed Decision

Pursuant to Rule 14.5(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

Findings of Fact

1. There is a full and complete record composed of all filed documents and all exhibits received into evidence, as well as the Technical Panel reports and a transcript of the settlement hearing.
2. The parties engaged in extensive negotiations leading to the settlement.
3. The parties to the settlement adopted in this decision had a sound and thorough understanding of all of the underlying assumptions and data included in the record and could make informed decisions in the settlement process.
4. The adopted settlement is between competent and well-prepared parties who were able to make informed choices in the settlement process.
5. The high speed rail project is a priority of the state and setting safety standards for the high speed rail system is an integral part of that project.

Conclusions of Law

1. The adopted settlement provides sufficient information for the Commission to discharge its future regulatory obligations.
2. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The new General Order 176 is exempt from CEQA.
4. This decision should be effective immediately so that General Order 176 adopted by this decision is implemented promptly.
5. The proceeding should be closed.

ORDER

IT IS ORDERED that:

1. The January 23, 2015 motion of the California High Speed Rail Authority for Approval of a Settlement Agreement and adoption of a proposed General Order is granted. The Settlement Agreement, attached to this decision as Attachment 1, is adopted.
2. The proposed General Order included as Appendix A to the Settlement Agreement (Attachment 1 to this decision) is adopted as General Order 176.
3. These proceedings are closed.

This Order is effective today.

Dated _____, 2015, at San Francisco, California.