STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 26, 2015 Agenda ID #14393

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-322:

This is the draft Resolution of Administrative Law Judge (ALJ) Kimberly H. Kim regarding Affirming Citation RTSB 1503001 issued to the Sacramento Regional Transit District, pursuant to Resolution ST-163, denying Sacramento Regional Transit District's appeal, and closing proceeding K.15-04-008. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than November 16, 2015, and reply comments shall be served no later than November 23, 2015. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Kim at kk2@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ AMY C. YIP-KIKUGAWA for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-322
Administrative Law Judge Division

R E S O L U T I O N

RESOLUTION ALJ-322. Affirming Citation RTSB 1503001 issued to the Sacramento Regional Transit District, pursuant to Resolution ST-163, denying Sacramento Regional Transit District's appeal, and closing proceeding K.15-04-008.

1. SUMMARY

This resolution affirms Citation RTSB 1503001 issued to the Sacramento Regional Transit District by the Commission's Safety Enforcement Division, on March 4, 2015, denies Sacramento Regional Transit District's appeal of Citation RTSB 1503001, and closes proceeding K.15-04-008.

2. BACKGROUND

Pursuant to Resolution ST-163,[1] on March 4, 2015, the Commission's Safety and Enforcement Division (SED), through its Rail Transit Safety Branch (RTSB), issued Citation RTSB 1503001 to the Appellant, Sacramento Regional Transit District (SRTD). Citation RTSB 1503001 assessed a $10,000 fine against SRTD for two counts of alleged violations of Commission General Order (GO) 143-B, Sections 4.12 (deadman control)[2] and 4.10 (door interlock),[3] as follows:

[1] Resolution ST-163 authorized SED to issue citations to rail fixed guideway system carriers, which we will refer to as Rail Transit Agencies (RTAs), for failure to comply with General Orders, Public Utilities Code Sections, and Federal Transit Regulations.

[2] A deadman control is an automated safety mechanism designed to automatically stop an LRV in the event that the human operator becomes incapacitated, such as through death, loss of consciousness or being physically removed from a position of control. In other words, it is a safety device to prevent runaway LRVs. *See* Hearing Transcript at 17 and 126.

[3] The door interlock mechanism is an automated safety device designed to automatically stop the LRV. If the doors are open, the door automatically interlocks with the braking system, stopping the LRV. Hearing Transcript at 19-20.

First Count [Disabling the Deadman Control]: Disabling the Deadman Control safety device by using a screwdriver to hold down the control, during a maintenance procedure, and then exiting the vehicle, leaving the Light Rail Vehicle (LRV) without protections against uncontrolled movement, in violation of Section 4.12 of GO 143-B.

Second Count [Disabling the Door Interlock]: Disabling the Interlocking Doors safety device, disconnecting the passenger door, during a maintenance procedure, and then exiting the vehicle, leaving the LRV without protections against uncontrolled movement, in violation of Section 4.10 of GO 143-B.

3. PROCEDURAL POSTURE

SRTD filed a timely appeal of Citation RTSB 1503001 on April 3, 2015 (Appeal), which initiated proceeding K.15-04-008.[4] An evidentiary hearing was conducted on May 15, 2015. SED had the burden of proving that the citation was proper.[5] Both SED and SRTD (Parties) presented evidence. During the evidentiary hearing, SRTD withdrew two procedural defect arguments as part of its basis for the Appeal.[6] Parties timely filed briefs. The matter was submitted.[7]

4. UNDISPUTED FACTS

These alleged violations occurred on February 17, 2015, when one of the SRTD's LRVs suddenly propelled out of SRTD's maintenance yard without an operator on board and out of control towards Downtown Sacramento.[8] At times, this run-away LRV reached speeds of up to 43 miles per hour[9] traversing through nearly 1.5 miles of rail tracks[10] and crossing intersections.[11]

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[4] Exhibit 16.

[5] Attachment A to May 4, 2015 ALJ's Ruling Setting Hearing; and Hearing Transcript at 3-4.

[6] Hearing Transcript at 6.

[7] At the close of the hearing, parties stipulated to submit briefings that addressed (1) whether Citation RTSB 1503001 complies with Resolution ST-163, and (2) whether GO 143-B applies to an LRV in maintenance mode.

[8] Exhibit 1.

[9] Hearing Transcript at 12.

[10] Exhibit 3.

[11] Hearing Transcript at 56.

As the run-away LRV propelled out of SRTD's maintenance yard located at 2700 Academy Way in Sacramento, California, two of its axles derailed.[12] Despite being partially derailed, the LRV continued to its movement until it reached the Swanston Station[13] where its central axle rerailed and the LRV hit the end of the station platform.[14] But that did not stop the LRV. The LRV continued to propel through two protected public crossings, first at Evergreen Street, and then at Arden Way and Royal Oaks Drive. The LRV finally lost power and came to a stop after causing damage to the pantograph[15] at the Arden Way and Del Paso Boulevard intersection.[16] General location and direction of the run-away LRV's travel path is depicted on the attached Appendix A.

Property damage from this incident exceeded $25,000.[17] No one was injured.[18] The foregoing account of events are undisputed.

During SED's investigation, an LRV Technician (LRV Technician) employed by SRTD admitted the following:

(1) Immediately prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, the LRV Technician was troubleshooting an electrical fault in the LRV's propulsion system;

(2) Prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, and when the LRV Technician was troubleshooting an electrical fault in the LRV's propulsion system, the LRV Technician purposely disabled the deadman control with a screwdriver; and

(3) Prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, and when the LRV Technician was troubleshooting an electrical fault in the LRV's propulsion system, the LRV Technician purposely disabled the

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[12] Exhibit 3.

[13] Swanston Station is located at Arden Way and Calvados Avenue in Sacramento, California.

[14] See Hearing Transcript at 60-61.

[15] A pantograph is a jointed framework conveying current to a train, a streetcar, or an electrical vehicle from overhead wires. *See* Hearing Transcript at 29.

[16] Hearing Transcript at 56; and Exhibit 1.

[17] GO 164-D, Section 7.2 (Reporting Requirements, requiring an RTA to report any damage in excess of $25,000); and *see also* Exhibit 1.

[18] *Ibid.;* and Exhibit 1.

passenger door interlock and left the LRV door open in order to facilitate the LRV Technician's entrance and exit of the LRV during the maintenance work.[19]

Additionally, Laura Espinoza, SRTD's Chief Mechanical Officer reported that prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, and when the LRV Technician was troubleshooting an electrical fault in the LRV's propulsion system, the LRV Technician had not powered down the LRV's propulsion system.[20]

Finally, the undisputed evidence shows that prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, and when the LRV Technician was troubleshooting an electrical fault in the LRV's propulsion system, no other technician or personnel was on board to stand by and assist in the event the LRV's fault cleared and it powered up again.[21]

5. DISCUSSION

The central issues we examine here are:

(1) Was Citation RTSB 1503001 issued in compliance with SED's authority under Resolution ST-163?

(2) Did SRTD violate Sections 4.10 and 4.12 of GO 143-B?

(3) Is it reasonable to order SRTD to pay the fine assessed by SED?

We reviewed the evidence in light of Commission's Resolution ST-163, GO 143-B and GO 164-D and the relevant sections of the SRTD's own operating rules, as they apply to the instant Appeal.

5.1. COMPLIANCE WITH RESOLUTION ST-163 AND VIOLATIONS OF GO 143-B

We start our review with the first two questions which are linked:

(1) Was Citation RTSB 1503001 issued in compliance with SED's authority under Resolution ST-163?

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[19] Hearing Transcript at 13-15.

[20] *Id*. at 45, and 51-52.

[21] *Id*. at 11; and *see also* Exhibit 13.

(2) Did SRTD violate Sections 4.10 and 4.12 of GO 143-B?

Resolution ST-163 authorizes SED to issue citations to RTAs for failure to comply with GOs, Code Sections, and Federal Transit Regulations.[22] The Commission delegated this citation authority to SED to empower SED to cite and enforce safety rules in the manner prescribed in the Resolution ST-163 to protect and promote the safety of public and RTA employees.[23]

As a general rule, under Resolution ST-163, SED must provide an RTA notice and opportunity to correct a violation before issuing a citation.[24] Under certain exigent circumstances, SED is not required to give prior notice and opportunity to correct before issuing a citation, if they involve (1) repeat violations that were previously corrected, but which have re-occurred, or (2) willful violations.[25] It was also envisioned that a citation must immediately be issued, with or without prior notice and opportunity to correct, when the alleged violation involves (1) an "operating rule failure" or (2) an "egregious condition that should have been discovered and corrected by the RTA."[26]

Egregious conditions include violations that (1) pose potential for serious imminent safety hazard that are not latent or hidden[27] and (2) those violations the RTA could and should have discovered and corrected in the course of the RTA's reasonable diligence.[28] Particularly for such critical yet preventable safety violations, Resolution ST-163 authorizes SED to issue citations, without prior notice and opportunity to correct because such immediate citation in those instances promote and serve the safety goals of that citation program which include, *inter alia*: (1) promptly alerting the RTA of the heightened importance of preventing the recurrence of the alleged violation and other similar failures or conditions; and (2) deterring preventable safety risks to the public

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[22] *See* Public Utilities Code Sections 309.7, 315, 778, and 99152. Unless otherwise specified, all references to "Code" in this resolution refer to California Public Utilities Code.

[23] Resolution ST-163 at 1.

[24] *Id.* at 2.

[25] *Id*. at 11-12. The Commission elaborated and acknowledged the exigent circumstances in the response to RTA's comment, as follows:

> Staff has agreed that before a citation is issued, staff should verify that the condition still exists, recognizing that some citations must be immediately issued after first discovery by Staff, such **as an operating rule failure**, or **egregious conditions that should have been discovered and corrected by the RTA.** [Emphasis added.]

[26] *Ibid*.

[27] *See* Hearing Transcript at 107.

[28] Resolution ST-163 at 11-12.

and others from failures or conditions that the RTA should have reasonably foreseen and taken action to prevent from occurring.[29]

In the instant Appeal, we find that both charges (the violations of GO 143-B, Section 4.12, disabling of the deadman control, and Section 4.10 disabling of the door interlock) involve operating rule failures and egregious conditions, as discussed below. Therefore, SED complied with Resolution ST-163 in issuing Citation RTSB 1503001 without giving prior notice and opportunity to correct.

Operating Rule Failures

GO 143-B sets out the applicable general operating rules for the California's RTAs. Here, SRTD also had its own applicable operating rules. In the instant Appeal, the two charges (alleged violations of GO 143-B, Sections 4.10 (disabling of door interlock safety device) and 4.12 (disabling of deadman control safety device)) involve acts that are prohibited by and are violations of the Commission's and RTA's own operating safety rules.

GO 143-B establishes the Commission's "rules and regulations … governing the … operation, and maintenance" activities of the RTAs such as SRTD.[30] In applying GO 143-B, the Commission directs that, "primary importance" should be given to the "safety of patrons, employees, and the public."[31]

GO 143-B, Section 1.08, requires that an LRV "shall be equipped as required by this General Order [143-B]. All such LRV equipment shall be maintained in safe proper working condition as required by the carriers' approved operating rules and procedures." Section 4.10 (door interlock) of the same GO requires that, "[t]he passenger side door shall be interlocked with the braking and propulsion control systems in such a manner that a stopped LRV cannot start and a LRV in motion will automatically brake if the doors are not closed." Section 4.12 (deadman control) of GO 143-B requires that:

> Every LRV shall be equipped with a safety device that requires the operator's continuous pressure or activity to remain activated. The safety device shall be interconnected with the propulsion and service braking system in such a manner that should the device fail to detect an appropriate level of activity or pressure exerted by the operator, propulsion power will be interrupted, brakes will be automatically

[29] *See* Resolution ST-163 at 1-2, and 11-12.

[30] GO 143-B, at 2, Section 1.03.

[31] *Ibid.*

> applied in a non-retrievable manner, and the train will be brought to a stop.

In relevant part, SRTD's own rules also provide: "[h]olding the DEADMAN by any other means than the operator's hand or foot while operating is prohibited."[32]

Here, the SRTD's LRV Technician, (1) admittedly and purposely disabled a mandatory safety device by disabling the deadman control required under GO 143-B, Section 4.12 with a screwdriver, and (2) also admittedly and purposely disabled the second safety device by disabling the passenger door interlock required under GO 143-B Section 4.10. We also note, the LRV Technician's disabling of the deadman control violated SRTD's own operating rules, which prohibited such act. In so doing, SRTD's LRV Technician left the LRV without any protection against the very safety hazards those devices were designed to prevent. In fact, the LRV propelled out of SRTD's maintenance yard on February 17, 2015, without any protection against uncontrolled movement. The run-away LRV could not be stopped as it traversed out of control toward Downtown Sacramento because those two layers of safeguards were intentionally disabled in violation of GO 143-B and SRTD's own operating safety rules.

With the GO 143-B policy context and the plain language of that GO Sections and charges, we must find that the acts of SRTD's employee (disabling of the safety devices) violate Sections 4.10 and 4.12 of GO 143-B, and those acts are "operating rule failures."

Egregiousness of the Violations

In addition to the operating rule failures, we also looked at the totality of the circumstances to discern whether the violations are "egregious conditions that should have been discovered and corrected by the RTA."[33] We did so by looking at (1) all of the surrounding circumstances, including any mitigating circumstances, and (2) what was at stake in the underlying operating rules.

First, the maintenance practices of disabling two separate safety devices are egregious safety violations of GO 143-B because there is such inherent and high potential for serious and imminent safety hazard. The purpose of the two disabled safety devices is to prevent run-away trains and related harm to persons and properties. Naturally, by disabling such devices, one is creating the potential for that foreseeable safety hazard (run-away train and harm to persons and properties). Therefore, disabling a safety

[32] Exhibit 9.

[33] Resolution ST-163, at 11-12.

device "is one of the highest risk violations."[34] This is evidenced by the result in this case.

Here, the result was a run-away LRV traversing at high speed toward Downtown Sacramento, jeopardizing the safety of the SRTD employees and members of the public. If the LRV had crossed over at a different point as it was leaving the maintenance yard, the LRV could have entered the other main line heading to directly to Downtown, near the Capitol.[35] Luckily, that did not happen, and the intersections that the LRV crossed were protected, so the run-away LRV did not cause any collisions with persons or oncoming motor vehicle traffic.[36] Nonetheless, the potential for destruction and injury to the public was very severe in this case. If the run-away LRV had not accidentally rerailed, it also could have left the rail line and entered public streets putting far more lives and properties in jeopardy.

Second, to make things even worse, after disabling the two separate layers of safeguards against uncontrolled LRV movements, the LRV Technician failed to power down the LRV's propulsion system while he was troubleshooting it and took no other alternate safety measure to anticipate and address the hazardous and likely event of a run-away LRV. Under these circumstances, it was highly foreseeable that once the maintenance effort (to clear the electrical fault) had been successfully completed, the LRV would automatically begin its movement when the propulsion system powered up, as it was designed to do. The evidence during the hearing showed that no other technician was even on board the LRV to stand by and assist to prevent uncontrolled LRV movement in the event the LRV's fault cleared, powered up again, and began motion under the propulsion system. The evidence during the hearing showed that SRTD had no procedure, practice, protocol or oversight to provide or require another technician to be on board to prevent such foreseeable uncontrolled LRV movements.

Third, there was no mitigating evidence or explanation presented to show that SRTD's LRV Technician used the best practice, the industry standard practice, or even the best judgment when the LRV Technician, (1) chose to disable two layers of safeguards, (2) chose not to power down the LRV while conducting maintenance work on the propulsion system; and (3) chose not to have another technician stand by and on the LRV in the event the LRV powered up again. There was similarly no mitigating evidence or explanation presented to show that SRTD's management diligently oversaw, supervised or monitored the maintenance practices to ensure the best practice was used or to provide alternative safeguards once a safety device had been disabled. The only explanation given by SRTD's employee was that the LRV Technician claims

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[34] Hearing Transcript at 134.

[35] *See* Hearing Transcript at 60-61.

[36] *See id.* at 56.

that he was taught to disable the deadman control during maintenance work by some unidentified "oldies" or "old heads," and that the LRV door was also left open for his convenience to facilitate the entrance and exit of the LRV during the maintenance work.

Fourth, the violations of GO 143-B, Sections 4.12 and 4.10 are egregious violations because SRTD could and should have discovered and corrected these safety hazards. What contributed to such blatant disregard for the operating rules is the absence of effective maintenance supervision, oversight, procedure and training by SRTD that could have discovered and prevented such hazardous and disturbing maintenance practices. SRTD could and should have corrected the safety hazards because SRTD has a general duty under GO 164-D to develop and implement safety plans that include training, supervision, oversight and the monitoring of safety practices of its employees. As required by GO 164-D, SRTD should have had in place effective measures to discover, correct and prevent violations of the safety rules that could have such grave safety ramifications, as well as the regular and effective training/certification of new employees and retraining/recertification of existing employees in order to ensure effective implementation and compliance of these safety rules.

Here, no evidence was presented to show that SRTD had in place effective measures to discover, correct and prevent these violations nor evidence of regular and effective training programs designed to train its employees of the critical importance of, (1) the safety devices, (2) the prohibition against disabling them, and (3) any ways to provide comparable alternate safety measures when such devices must be disabled or are in disrepair.

All these circumstances evidence blatant disregard for safety and lives. We view these circumstances in the overall context with the importance of the critical safety mission that was at stake in the operating rules, the "safety of patrons, employees, and the public."[37] We find the violations and total lack of safety precautions to be, "egregious conditions that should have been discovered and corrected by the RTA."[38]

In sum, these violations involve operating rule failures, and there are exigent circumstances, discussed above. SED therefore did not have to provide SRTD with prior notice and opportunity to correct the violation, prior to issuing Citation RTSB 1503001, and the Citation was issued properly under Resolution ST-163. The Citation 1503001 is affirmed. SRTD's appeal is denied.

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[37] GO 143-B, at 2, Section 1.03.

[38] Resolution ST-163, at 11-12.

5.2. REASONABLENESS OF ASSESSED FINE

We now address whether a fine in the amount of $10,000 (two violations/incidents at $5,000 each) is reasonable.

As discussed below, the fine of $10,000 is reasonable here. The Commission's underlying citation authority derives from Code Sections 309.7, 315, 778, and 99152. In general, Code Section 778 grants the Commission the authority to promulgate rules and regulations governing the RTAs. Code Section 315 authorizes SED to investigate accidents.[39] Code Section 99152 grants the Commission the authority to enforce these rules and regulations.[40] Code Section 309.7 authorizes SED to investigate RTA's to ensure compliance with state and federal regulations, and to collect fines when those regulations are violated.

GO 143-B was lawfully promulgated as part of the Commission's authority to promulgate rules and regulations governing the RTAs. Specifically, it provides that: "These rules and regulations are applicable to light-rail public transit guideways…"[41] Additionally, the first sentence of Resolution ST-163 explains the purpose of that resolution which is to establish, "a citation program… for enforcing compliance with certain General Orders and other requirements for public transit guideway system carriers… operating in California." In other words, the Citation program was designed to enforce compliance with Commission rules for RTAs operating in California.[42]

As is the case here, if an RTA fails to comply with the Commission's lawfully promulgated safety rules, the Commission has both the duty and authority to investigate and enforce those safety regulations as well as order reasonable fines.[43]

In Decision (D.) 98-12-075, the Commission sets forth five factors that must be considered in order to determine whether a fine is reasonable:

(1) The severity of the offense (with violations that cause or threaten physical harm to people or property being considered the most severe);

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[39] *See id.* at 4.

[40] *Id*. at 5.

[41] GO 143-B at 2, Section 1.04.

[42] Resolution ST-163, at 1; and *see also id*. at 2, Section 1.03.

[43] *See aslo* Appendix A, Specified Violations and Scheduled Penalties, Resolution ST-163 at pages A-1 to A-4.

(2) The conduct of the utility in preventing, detecting, disclosing and rectifying the violation;

(3) The financial resources of the utility (in order to ensure that the constitutional limits on excessive fines are not exceeded);

(4) The amount of fine in the context of prior Commission decisions; and

(5) The totality of the circumstances in furtherance of the public interest.[44]

We will consider these five factors in evaluating the reasonableness of the fine here. These factors closely mirror the considerations listed in Code Section 2104.5.[45] While that code section applies to gas pipeline safety, the Commission has analogously applied it's considerations in other types of proceedings.[46]

The first factor is the severity the offense (with violations that cause or threaten physical harm to people or property being considered most severe). Here, the extreme seriousness of the violations is incontrovertible. As discussed in detail, in Section 5.1 of this resolution (Egregiousness of the Violations), these safety rule violations,[47] and the compounding of numerous highly unsafe acts of the SRTD employee[48] caused the run-away LRV accident of February 17, 2015, and put lives and properties in danger. As the run-away LRV traversed through nearly 1.5 miles toward Downtown Sacramento, it is only by luck that the LRV did not injure or kill SRTD employees before it sped out-of-control and out of the SRTD maintenance yard that day. It is only by luck that the run-away LRV rerailed, after initially and partially derailing, and did not

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[44] D.98-12-075, 1998 Cal. PUC LEXIS 1016, at 10 (listing the five factors), and 72-78.

[45] *See* Code Section 2104.5 (weighing factors including the size of a business, the gravity of the violation/s, and the good faith of the business to achieve compliance when assessing the reasonableness of a fine.)

[46] *See, e.g.,* D.11-11-001 (Order Instituting Investigation into the Operations and Practices of Pacific Gas and Electric Company, Regarding the Gas Explosion and Fire on December 24, 2008 in Rancho Cordova, California in Proceeding No. I.10-11-013); D.08-09-038 (Order Instituting Investigation into the Practices of the Southern California Edison Company to Determine the Violations of the Laws, Rules, and Regulations Governing Performance Based Ratemaking, its Monitoring and Reporting to the Commission, Refunds to Customers and Other Relief, and Future Performance Based Ratemaking for this Utility in Proceeding No. I.06-06-014); D.04-09-062 (Order Instituting Investigation into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers in Investigation in Proceeding No. I.02-06-003).

[47] Disabling a safety device "is one of the highest risk violations." Hearing Transcript at 134.

[48] These acts include but are not limited to the failure to cut off the propulsion power to the LRV. *See id*. At 45, 51-52.

plunge off track and cause more harm to lives and properties. It is only by luck that the run-away LRV lost power before reaching Downtown Sacramento where more lives could have been lost and more properties could have been put in harm's way.

The second factor focuses on the utility's actions in preventing, detecting, disclosing and rectifying the violation. Here, SRTD failed to effectively train, discover, supervise, oversee, correct and prevent these violations. As discussed in detail in Section 5.1 (Egregiousness of the Violations) of this resolution, SRTD presented no evidence to show that it provided effective training or supervision, or took any action to discover or prevent these violations. Instead, it provided two brief "Department Notices," dated after that accident, which merely reiterated the Commission's applicable safety rules. As discussed in the previous section of this resolution, these notices were untimely and inadequate.

The third factor is the financial resources of the cited utility. Here, the Commission must ensure against excessive fines.[49] In D.98-12-075, the Commission explained:

> Effective deterrence … requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.[50]

In other words, an effective fine is one that reflects the severity of the harm at issue and is also proportionate to the offending entity, SRTD. The fine therefore should be high enough to influence an offending entity in such a way so as to deter future similar violations, yet not so high that an "extremely modest, one-person operation" would be put out of business.

SRTD is certainly not an "extremely modest, one-person operation."[51] In fact, it is governed by an 11-member Board of Directors comprised of members of the

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[49] *See* Exhibit 16; *see also* D.98-12-075.

[50] D. 98-12-075, 1998 Cal. PUC LEXIS 1016, at 59-60.

[51] Official notice is taken of the general size and nature of SRTD's operation as confirmed in the Commission's filings and SRTD's own website (http://www.sacrt.com and/or http://www.sacrt.com/rtataglance.stm and/or http://www.sacrt.com/budget.stm); *See* California Evidence Code Section 452, subsections (g) and (h), and the Commission's Rules of Practice and Procedures, Rule 13.9 (allowing official notice of a fact that is common knowledge "not subject to

Sacramento, Rancho Cordova, Citrus Heights, Elk Grove, Folsom City Councils as well as the Sacramento County Board of Supervisors. SRTD currently operates 47 stations, covering nearly 40 miles and a 418 square-mile service area. SRTD's light rail trains operate daily with weekday ridership averaging over 50,000 passengers and SRTD maintains the financial resources to support the magnitude of such operation.[52] For SRTD, a $10,000 fine is appropriate and reasonable for these violations considering the surrounding aggravating circumstances and conduct. It is proportionate to such a large transit agency and is proportionate to the gravity of safety violations at issue. It is a substantial fine that sends the message to SRTD and other RTA's, that safety must be taken seriously and the same or similar future violations must be prevented.

The fourth factor we examine is whether the assessed fine is reasonable in light of Commission precedent. In the 2011-2012 fiscal year, SED issued two citations to Union Pacific with fines totaling $60,000.[53] The two citations and fines ($33,000 and then $27,000) involve safety violations under GO 26-D (clearance requirements).[54] In view of those past safety fines, we believe the Commission precedents support a $10,000 fine in this case.

The final and fifth factor we consider is the totality of the circumstances, with an eye towards protecting the public interest. As we discussed in detail, in Section 5.1 (Egregiousness of the Violations), a $10,000 fine is reasonable looking at all of the circumstances including lack of mitigation, and many aggravating factors. The importance of the safety policies and the attendant public interests as set forth in GO 143-B must be protected. We must protect the public interest by assessing a fine sufficient to deter another run-away LRV accident. In D.98-12-075, the Commission explained the policy of deterrence in order to justify a fine:

> The purpose of a fine is to go beyond restitution to the victim and to *effectively deter further violations* by this perpetrator or others… Effective deterrence creates an incentive for public utilities to *avoid violations*. Deterrence is particularly important against violations which could

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reasonable dispute" or other "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.")

[52] *Ibid.*

[53] Official notice is taken of the Annual Railroad Safety Activity Report to the California State Legislature for fiscal year 2011-2012 available at (accessed on September 29, 2015): http://www.cpuc.ca.gov/NR/rdonlyres/B115E8E1-97FE-4462-9B79-2AD0A5679485/0/AnnualRailroadSafetyActivityReporttotheCaliforniaStateLegislature_v2.pdf; *See* 2011-2012 Report at 11.

[54] *See* 2011-2012 Report at 11.

> result in public harm, and particularly against those where severe consequences could result. [*Emphasis added*.][55]

By confirming this fine of $10,000, we deter future like safety violations and incentivize SRTD and other RTAs to work more diligently to ensure that a similar incident does not recur. Based on all of the foregoing, the assessed fine of $10,000 is reasonable and appropriate.

5.3. SRTD'S ARGUMENTS

SRTD argues that it did not violate GO 143-B, Section 4.12 (prohibiting the disabling of the deadman control) and Section 4.10 (requiring passenger side door that interlocks with the braking and propulsion systems). SRTD points to Section 1.08 of GO 143-B requiring that every LRV "shall be equipped" with all safety devices, and those devices be properly "maintained."[56] Emphasizing those words, SRTD contends that these operating rules should be viewed more as equipment requirements, as opposed to operating rules. Thus, SRTD argues that since the LRV was equipped with those safety mechanisms, albeit admittedly disabled, these rules should not apply. SRTD also argues that such rules should not apply to situations when an LRV is simply being maintained and not serving the patrons. Thus, SRTD argues that because the admitted actions by its LRV Technician occurred in SRTD's maintenance yard during a maintenance activity, SRTD believes the cited operating rules should not apply. We disagree with these arguments.

These safeguards in GO 143-B were specifically designed to provide layered and automated protections against run-away LRVs to promote the "safety of patrons, employees, and the public."[57] The very essence and intent of GO 143-B would be undermined if we simply interpret those rules as equipment requirements and/or suspend those critical safety rules during maintenance. To do so would jeopardize the safety protection of the employees and public, even if no patrons are on board.

The plain language of GO 143-B does not differentiate between situations where LRV is being maintained or in service, transporting patrons. Go 143-B is far more than a mere equipment standard, and applies to both maintenance and operation. Moreover, it would be imprudent, illogical, and contrary to the purpose of GO 143-B, to construe it to mean that disabled safety mechanisms comply with the intended safety requirements the GO 143-B or that less safety is needed during maintenance, or that these operating rules should not be applied to the LRVs that are being maintained. All required safety

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[55] D.98-12-075, 1998 Cal. PUC LEXIS 1016, at 54.

[56] *Id.* at 2, Section 1.08.

[57] GO 143-B, at 2, Section 1.03.

devices therefore must not only be installed but also functioning properly. The GO 143-B rules apply to LRVs that are being maintained in the RTA's maintenance yard or elsewhere, unless there is a special exception necessitating a variance from such rules.[58] Therefore, we reject SRTD's arguments.

SRTD also questions the timing of the Citation, and argues that SRTD had already taken appropriate corrective action by the time SED issued the Citation such that when the citation was issued, there was no longer a violation.[59] We disagree.

As we discussed in the foregoing Section 5.1, SED properly issued the Citation under the circumstances, and the corrective action SRTD took was not sufficient in this case. Evidence presented at the hearing showed that SRTD issued two, very brief, one-page "Department Notices," after the February 17, 2015 incident, advising SRTD maintenance employees against disabling safety devices and directing the employees to contact their "supervisor for clarification."[60]

There is no evidence that SRTD carefully audited and updated its safety and maintenance practices, procedures, and plans to strengthen them in light of the lessons learned February 17, 2015, run-away LRV incident.[61] There is no evidence that SRTD provided effective retraining of its maintenance staff on the critical importance of the safety devices, other than to reiterate the rules. There was no evidence presented that showed SRTD devised and implemented alternative safety practices on disabling multiple safety devices which may have to be done during certain extraordinary or maintenance efforts. There is no evidence that SRTD provided effective debriefing of lessons learned from the February 17, 2015, run-away LRV incident. In short, these two brief department notices are an insufficient response and inadequate corrective action, given the serious safety concerns raised by the violations.

Lastly, SRTD argues that the Citation was issued improperly due to procedural defects and makes the following procedure-based arguments. We address each argument below and reject them.

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[58] It is foreseeable that a circumstance may arise if the particular safety device, such as deadman control or interlocking doors, is in disrepair and requiring repair in the RTA's maintenance yard. In those instances, the RTAs may devise a plan that ensures other alternate and effective layers of safeguards are provided to offset the potentially foreseeable hazard. That can be proposed in the RTA's SSPP to continue to protect the public and others while conducting any necessary maintenance work.

[59] *See* Exhibit 16.

[60] *See* Exhibits 12-14.

[61] *See e.g.,* Exhibit 14 (SRTD acknowledges that "Some troubleshooting and maintenance processes will require a second person in the cab to hold the dead man.")

Investigation.

SRTD argues that the citation was issued prematurely because SED had not completed its investigation at the time it issued the Citation, or alternatively that SED conducted an inadequate investigation.[62] There can always be more investigation but the standard in upholding a citation does not require a showing nor an examination that the investigation was completed. We believe SED's investigation provided SED adequate grounds to issue the Citation when it did. As discussed further in foregoing Section 5.1, we find no procedural defect, and the Citation was justified, supported, and properly issued.

Notice and reasonable opportunity

SRTD argues that a notice and reasonable opportunity to correct should have been provided before SED issued the Citation. As discussed in the foregoing Section 5.1, the exigent circumstances justified SED's issuance of the Citation, without prior notice and opportunity to correct.

6. CONCLUSION

Citation RTSB 1503001 is affirmed. The Appellant's appeal is denied. SRTD shall pay the fine of $10,000, and shall reexamine all of its maintenance activities and practices to update and implement its updated System Safety Procedure Plan (SSPP) which includes a comprehensive procedure and training program designed to reinforce the importance of safety devices and to effectively ensure against future like incidents. The updated SSPP must comply with GO 164-D and include programs and procedures to clarify the operating rules as well as train, retrain, certify, recertify, supervise, and oversee the safety practices of its employees. SRTD should submit the updated SSPP, in compliance with GO 164-D, to SED, and SED shall review and approve the SSPP or request modifications.

7. COMMENT

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was published for comment.

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[62] *See* Hearing Transcript at 6. SRTD withdrew two other related procedural arguments, (1) that the Citation was issued prematurely because the SED did not provide RTAs with procedures for implementing the citation program as promised and (2) that the Citation was issued prematurely because it was not accompanied by required certificate of service; and *see also* Exhibit 16.

8. ASSIGNMENT OF PROCEEDING

Kimberly H. Kim is the assigned Administrative Law Judge in this proceeding.

FINDINGS OF FACT

1. On February 17, 2015, one of the SRTD's LRVs suddenly propelled out of SRTD's maintenance yard without an operator on board and out of control towards Downtown Sacramento.

2. Prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, the LRV Technician (a) was troubleshooting an electrical fault in the LRV's propulsion system, (b) purposely disabled the deadman control with a screwdriver, (c) purposely disabled the passenger door interlock and left the LRV door open in order to facilitate the LRV Technician's entrance and exit of the LRV during the maintenance work, and (d) had not powered down the LRV's propulsion system.

3. Prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, no other technician or personnel was on board the LRV to stand by and assist to prevent uncontrolled LRV movement in the event the LRV's fault cleared, it powered up again, and it began motion under the propulsion system.

4. No evidence was presented showing that, prior to the run-away LRV propelling out of the SRTD maintenance yard on February 17, 2015, SRTD had an effective procedure, practice, protocol or oversight to provide or require another technician or personnel to be on board the LRV to stand by and assist to prevent uncontrolled LRV movement in the event the LRV's fault cleared, it powered up again, and it began motion under the propulsion system.

5. If an RTA fails to comply with the Commission's lawfully promulgated safety rules, the Commission has both the duty and authority to investigate and enforce those safety regulations as well as order reasonable fines.

6. GO 143-B sets forth safety operating rules and applies to both maintenance and operation, and the safety device requirements under GO 143-B are more than mere equipment requirements/standards.

7. Under certain exigent circumstances, SED is not required to give prior notice and opportunity to correct a violation before issuing a citation, and a citation must immediately be issued, when the alleged violation is (a) an "operating rule failure" or (b) an "egregious condition that should have been discovered and corrected by the RTA."

8. Disabling a safety device, especially an automated safety device connected to the braking and propulsion systems of an LRV, is one of the highest risk violations.

9. Citation RTSB 1503001 assessed a $10,000 fine against SRTD for two counts of alleged violations of Commission GO 143-B, Sections 4.12 (deadman control) and 4.10 (door interlock).

10. SRTD filed a timely the Appeal.

11. The cited violations in Citation RTSB 1503001 and the resulting run-away LRV created a serious safety hazard and potential for great injury and death to the public and SRTD's own employees.

12. There is no mitigating evidence of these serious and egregious violations of the operating safety rules.

13. SRTD could and should have but failed to adequately prevent, detect, and correct the serious and egregious safety hazards and violations of GO 143-B, Sections 4.12 and Section 4.10.

14. SRTD failed to have effective measures, plans or practices to discover, correct and prevent violations of the safety rules that could have such grave safety ramifications, as well as the regular and effective training/certification of new employees and retraining/recertification of existing employees in order to ensure effective implementation and compliance of these safety rules and effective prevention of such safety rule violations.

CONCLUSIONS OF LAW

1. Under Resolution ST-163 and the exigent circumstances, SED should not have given notice and opportunity to SRTD to correct before issuing the Citation.

2. Citation RTSB 1503001 was issued in compliance with SED's authority under Resolution ST-163.

3. Both charges of Citation RTSB 1503001 and the acts of SRTD's employee (in leaving the LRV without any of the required layered safety protection against uncontrolled movement) constitute violations of Sections 4.10 and 4.12 of GO 143-B and are (a) serious and egregious violations and (b) violations of operating safety rules.

4. Both charges of Citation RTSB 1503001 (alleged violations of GO 143-B, Sections 4.10 (disabling of door interlock safety device) and 4.12 (disabling of deadman control safety device)) involve acts that are prohibited by and are violations of the Commission's and RTA's own operating safety rules.

5. The absence of effective maintenance supervision, oversight, procedure and training by SRTD (that could have discovered and prevented such a hazardous and disturbing maintenance practices), in part, contributed to the LRV Technician's and potentially other SRTD employee's blatant disregard for the operating rules.

6. GO 143-B must be applied with a focus on the safety of light rail patrons, RTA employees, and the general public.

7. GO 143-B should not be construed to mean that disabled safety mechanisms comply with the intended safety requirements the GO 143-B.

8. GO 143-B should not be construed to mean that less safety is needed during maintenance.

9. GO 143-B should not be construed to mean that the operating rules should not be applied to the LRVs that are being maintained.

10. GO 143-B requires that all required safety devices must be installed and functioning properly.

11. The GO 143-B rules apply to LRVs that are being maintained in the RTA's maintenance yard or elsewhere, unless there is a special exception necessitating a variance from such rules.

12. The corrective action SRTD took was not sufficient in this case.

13. SRTD's defenses to the Citation and related arguments lack merit.

14. The Citation was not issued prematurely.

15. The Citation 1503001 should be affirmed.

16. SRTD's appeal should be denied.

17. The fine of $10,000 is reasonable.

18. SRTD should reexamine all of its maintenance activities and practices to update and implement an updated SSPP which includes a comprehensive procedure and training program designed to reinforce the importance of safety devices and to effectively ensure against future like incidents.

19. SRTD should develop an updated SSPP that complies with GO 164-D and include programs and procedures to clarify the operating rules as well as train, retrain, certify, recertify, supervise, and oversee the safety practices of its employees.

20. SRTD should submit the updated SSPP, in compliance with GO 164-D, to SED, for review and approval.

21. The proceeding should be closed.

IT IS THEREFORE ORDERED that:

1. Citation RTSB 1503001 issued to Sacramento Regional Transit District is affirmed.

2. Sacramento Regional Transit District's appeal of Citation RTSB 1503001 is denied.

3. Sacramento Regional Transit District shall pay a fine of $10,000 in full within 30 days of this resolution or contact the Commission's Safety and Enforcement Division (SED) and begin to make payments within 30 days based on an approved written payment plan with SED. All checks should be made payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment the fine shall be deposited in the State Treasury to the credit of the General Fund.

4. Sacramento Regional Transit District (SRTD) shall develop a clear operating rule regarding the deadman control (General Order (GO) 143-B, Section 4.12) and the interlocking door (GO 143-B, Section 4.10) safety devices. This operating rule shall be included in SRTD's annual System Safety Procedure Plan (SSPP). SED will review and approve the operating rules and the SSPP, or request modifications.

5. Within 90 days from the date of this resolution, Sacramento Regional Transit District shall:

(a) Reexamine all of its maintenance activities and safety practices to update its System Safety Procedure Plan (SSPP) which includes a comprehensive procedure and training program designed to reinforce the importance of safety devices and to effectively ensure against

future like incidents of unattended and uncontrolled Light Rail Vehicles;

(b) Develop and implement an updated SSPP and programs to train, retrain, certify, recertify, supervise, and oversee the safety practices of its employees;

(c) Prepare and submit these procedures in the form of an updated SSPP in compliance with General Order (GO) 143-B, GO 164-D and all other Commission rules and regulations as determined by Safety and Enforcement Division (SED); and

(d) Implement the approved updated SSPP, as soon as it is approved by SED, as soon as practicable thereafter.

6. Within 60 days from the issuance of Sacramento Regional Transit District's submission of an updated System Safety Procedure Plan (SSPP), ordered in the preceding Ordering Paragraph 5, the Commission's Safety and Enforcement Division will review and approve the SSPP or request modifications.

7. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

_____

Timothy Sullivan
Executive Director

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who have provided an e-mail address for Resolution ALJ-322, K.15-04-008.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability/hardcopy of the document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

The official service list I use is current as of today's date.

Dated October 26, 2015, at San Francisco, California.

/s/ LILLIAN LI

Lillian Li

********** **SERVICE LIST** **********

K.15-04-008

Appeal of Sacramento Regional Transit District from Citation RTSB 1503001

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(End of Service List)

Appendix A

(General location and direction of the Sacramento Rail Transit District's run-away LRV travel path)

(END OF APPENDIX A)