

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



**FILED**

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Order Instituting Rulemaking to determine whether the temporary measures adopted in Resolution SX-88 or other measures banning personal use of electronic devices by rail transit personnel should be adopted on a permanent basis.

Rulemaking 08-10-007  
(Filed October 16, 2008)

**JOINT MOTION OF SETTling PARTIES FOR  
COMMISSION APPROVAL OF SETTLEMENT AGREEMENT  
AND ADOPTION OF COMPROMISE GENERAL ORDER  
(VERIFIED)**

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(VERIFIED)**

In accordance with Rule 12.1 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”) and rulings of the Assigned Administrative Law Judge<sup>1</sup>, the undersigned Respondent Rail Transit Agencies (“RTAs”) and labor unions representing RTA employees (“Unions”), collectively referred to herein as the “Settling Parties,” hereby jointly move for Commission approval of the Settlement Agreement submitted as Attachment A to this Joint Motion and for adoption of the proposed rules and regulations set forth in the Appendix to that Settlement Agreement. The Appendix to the Settlement Agreement is a compromise General Order to govern the use of Personal Electronic Devices (“PEDs”) by employees of RTAs and rail fixed guideway systems under the Commission’s jurisdiction in the State of California.

The RTAs joining in this Motion and in the Settlement Agreement are Los Angeles County Metropolitan Transportation Authority; North County Transit District;

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<sup>1</sup> Per telephone conference with Staff of the Commission’s Consumer Protection and Safety Division, the Assigned ALJ has allowed this Joint Motion to be filed and served on or before April 5, 2011.

Sacramento Regional Transit District; San Diego Trolley, Inc.; San Francisco Bay Area Rapid Transit District; Santa Clara Valley Transportation Authority; and SFO Airtrain. The Unions joining in this Motion are Amalgamated Transit Union, International Brotherhood of Electrical Workers, Local Union 465, and United Transportation Union.

#### **A. Procedural Background**

Initiated almost two and a half years ago, this rulemaking proceeding initially was slow moving and unproductive, focusing on a draft general order that the RTAs believed to be impractical and unreasonably costly to implement and apply. To resolve a deadlock, several RTAs met *ex parte* in February 2010 with one of the Assigned Commissioner's advisors. Subsequent to that meeting, presiding Administrative Law Judge ("ALJ") Kim directed all parties to resume negotiations to seek agreement on regulations to govern the use of PEDs during rail transit-related activities.

As part of those renewed settlement negotiations, Staff scheduled and conducted a series of informal workshops at the Commission's offices in San Francisco. Initially, these meetings were held separately between Consumer Protection and Safety Division staff ("Staff") and the RTAs and then between Staff and the Unions. After some common ground was reached, a joint meeting, with all parties, was held. These meetings were punctuated by numerous E-mail exchanges through which various revisions to a draft General Order were proposed and discussed. In virtually all instances, Staff originated and organized these E-mail exchanges, usually providing its own revisions.

This process culminated in the circulation of a Staff E-mail on January 18, 2011 to which was attached a red-lined draft general order presented as "what CPSD can support as advisors to the Commission" but incorporating changes to accommodate requests from several of the parties. On February 24, 2011, Staff circulated by E-mail a clean copy of the

same draft general order, indicating that all 16 participating parties – 11 RTAs and 5 Unions – had indicated acceptance of the compromise provisions of the draft General Order previously circulated on January 18. Staff’s February 24 E-mail recommended that the parties convene a Settlement Conference.

In rulings issued February 3 and February 4, 2011, ALJ Kim indicated that a joint settlement motion complying with Article 12 (Settlements)<sup>2</sup> of the Commission’s procedural rules should be filed by March 22. The ALJ’s subsequent ruling of March 4, 2011 specifically ordered that a Settlement Conference be convened on March 16, stating that a settlement already had been reached and that a joint motion and a “settlement document” could be prepared and ready for immediate filing just after the Settlement Conference was completed. Although Staff had facilitated the settlement process, ALJ Kim declared that “CPSD is not technically a party to the settlement agreement,” and so should not attend the Settlement Conference. ALJ Ruling of March 4, 2011, at 3.

With assistance from Staff, the Settlement Conference was held in one of the Commission’s hearing rooms in San Francisco on March 16, 2011. The Conference was personally attended by representatives of several RTAs and one Union, and telephonically attended by representatives of additional RTAs and another Union. A list of Settlement Conference participants is provided as Attachment B to this Joint Motion. The scope of the

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<sup>2</sup> It should be noted that the use of Article 12 settlement procedures in a rail safety rulemaking proceeding is very unusual and may not be best suited for the particular circumstances of this case, especially when Staff takes the position that it is not a “settling party”. A review of transit-related rulemakings over the past ten years indicates that the consensual modification of general orders has not previously been accomplished with the sort of “settlement” procedures used herein. In all cases, the agreed regulation was simply placed before the Commission by Staff by a resolution or through a Proposed Decision issued by an ALJ (pursuant to an OIR). See, e.g., G.O. 88-B (Res. SX-54); G.O. 143-A (D.91-05-015); G.O. 143-B (Res. ST-47); G.O. 75-D (Res. SX-73); G.O. 164-D (D.07-05-014). In the modification of these various transit-related regulations, there has been no indication of a formalized “settlement” among the affected parties.

settlement was limited to acceptance of a set of proposed rules in the form of a General Order, set forth in the Appendix to Attachment A. The Settling Parties understood that they were not agreeing to anything other than the unmodified language of the compromise General Order as shown in the Appendix to Attachment A.

The parties in attendance agreed unanimously to support Commission adoption of the compromise General Order that Staff had circulated by E-mail on February 24. Participants at the settlement conference delegated to counsel for Los Angeles County Metropolitan Transportation Authority (“Metro”) and Santa Clara Valley Transportation Authority (“VTA”) the task of preparing a Joint Motion and settlement document sufficient to submit the compromise General Order for Commission approval under Article 12 of the Commission’s Rules. The notice and conduct of the March 16 Settlement Conference satisfied the requirements of Rule 12.1(b).

Before the Settlement Conference ended, participants called Paul King of CPSD to request his assistance in obtaining more time for the submission of a Joint Motion, and he agreed to seek a two-week extension of the March 22 deadline. Mr. King subsequently informed Metro’s counsel that ALJ Kim had allowed a two-week extension of the filing deadline.

Counsel for Metro and VTA thereafter drafted this Joint Motion and the attached Settlement Agreement and circulated the two documents for approval and signature to all the RTAs and Unions that have been parties to or active in this Proceeding. Most of those entities are among the Settling Parties on behalf of which this Joint Motion and the attached Settlement Agreement have been signed.

## **B. The Terms of Settlement**

As a result of the workshops and settlement process described above, facilitated as indicated by CPSD, the RTAs and the Unions have agreed upon a set of regulations intended to govern the use of personal electronic devices by employees of RTAs and rail fixed guideway systems operating in the State of California. The product of that agreement is presented in the Appendix to the attached Settlement Agreement, in the form of a proposed compromise General Order.

The terms of the compromise General Order speak for themselves. As stated in Subsection 1.2 (Purpose) of the compromise General Order, its purpose is “to eliminate distractions from the use of personal electronic devices by certain RTA employees operating, controlling, or working around rail transit vehicles or tracks, as defined herein.” By its terms, this compromise General Order comprises a settlement among the undersigned Settling Parties and, in the words of CPUC Rule 12.1(a), provides “a mutually agreeable outcome to the proceeding”.

The Settling Parties join in support of their Settlement Agreement, the compromise General Order, and this Joint Motion. In consideration of the fact that both CPSD and the Settlement Conference participants support the compromise General Order, the Settling Parties urge the Commission to approve the Settlement Agreement and to adopt the compromise General Order. Commission adoption of the compromise General Order will settle and resolve the issues presented in this rulemaking proceeding and will not extend to issues beyond the scope of the settlement process described in Section A of this Joint Motion.

**C. Conclusion**

WHEREFORE, the undersigned parties hereby respectfully move for the Commission to approve the Settlement Agreement and to adopt the compromise General Order attached to this Joint Motion as a fair and appropriate settlement resolving the issues presented in this rulemaking, reasonable in light of the whole record, and providing a sufficient set of regulations to govern the use of personal electronic devices by employees of rail transit agencies and rail fixed guideway systems under the Commission's jurisdiction.

In accordance with the Commission's Rule 12.1(c), neither the settlement terms specified in the compromise General Order nor this Joint Motion includes any deadline for Commission approval. However, the Settling Parties note that the present rulemaking proceeding has been underway for nearly two and a half years, and respectfully urge that prompt adoption of the compromise General Order will well serve the public interest.

Respectfully submitted, this 5<sup>th</sup> day of April, 2011,

SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY

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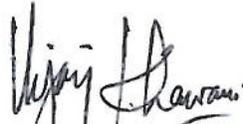
Attorneys for LOS ANGELES  
COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

## VERIFICATION

I, Vijay Khawani as Director of Corporate Safety for Los Angeles County Metropolitan Transportation Authority, am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 1, 2011, at Los Angeles, California.



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Vijay Khawani  
Director of Corporate Safety  
Los Angeles County Metropolitan  
Transportation Authority

# **ATTACHMENT A**

## SETTLEMENT AGREEMENT

The undersigned participants in Rulemaking 08-10-007 before the California Public Utilities Commission (“Commission”) hereby agree to support adoption by the Commission of the compromise General Order set forth in the Appendix to this Settlement Agreement as a sufficient set of regulations to govern the use of personal electronic devices by employees of rail transit agencies and rail fixed guideway systems under the Commission’s jurisdiction.

Entered into this 5<sup>th</sup> day of April, 2011 by:

Amalgamated Transit Union

International Brotherhood of Electrical Workers,  
Local Union 465

Los Angeles County Metropolitan Transportation Authority

North County Transit District

Sacramento Regional Transit District

San Diego Trolley, Inc.

San Francisco Bay Area Rapid Transit District

Santa Clara Valley Transportation Authority

SFO Airtrain

United Transportation Union

SIGNATURE PAGE FOR AMALGAMATED TRANSIT UNION

I hereby express the support of Amalgamated Transit Union for the foregoing Settlement Agreement and the appended Compromise General Order.

By: 

Name: SHANE A. GUSMAN

Title: ATTORNEY

Broad & Gusman LLP  
1127 11th St, Ste 501  
Sacramento, CA 95814

Date: 4/4/2011

SIGNATURE PAGE FOR  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 465

I hereby express the support of the International Brotherhood of Electrical Workers, Local Union 465 for the foregoing Settlement Agreement and the appended Compromise General Order.

By:  \_\_\_\_\_

Name:     Ric Cupples    

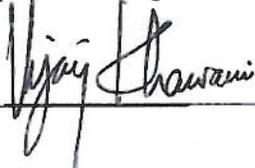
Title:     Business Representative    

7444 Trade Street  
San Diego, CA 92121-3413

Date:     04/01/2011

SIGNATURE PAGE FOR LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

I hereby express the support of Los Angeles County Metropolitan Transportation Authority for the foregoing Settlement Agreement and the appended Compromise General Order.

By: 

Name: Vijay Khawani

Title: Director, Corporate Safety

One Gateway Plaza  
Los Angeles, California 90012-2952

Date: April 1, 2011

SIGNATURE PAGE FOR NORTH COUNTY TRANSIT DISTRICT

I hereby express the support of North County Transit District for the foregoing Settlement Agreement and the appended Compromise General Order.

By: Matt O. Tucker

Name: Matthew O. Tucker

Title: Executive Director

810 Mission Avenue  
Oceanside, California 92054

Date: March 30, 2011

SIGNATURE PAGE FOR SACRAMENTO REGIONAL TRANSIT DISTRICT

I hereby express the support of Sacramento Regional Transit District for the foregoing Settlement Agreement and the appended Compromise General Order.

By: 

Name: Mark Lonergan

Title: Chief Operating Officer

P.O. Box 2110  
Sacramento, California 95812-2110

Date: March 31, 2011

SIGNATURE PAGE FOR SAN DIEGO TROLLEY, INCORPORATED

I hereby express the support of San Diego Trolley, Incorporated for the foregoing Settlement Agreement and the appended Compromise General Order.

By:

A handwritten signature in black ink, appearing to read "E. Wayne Terry", is written over a horizontal line.

Name: E. Wayne Terry

Title: Chief Operating Officer – Rail

1255 Imperial Avenue - Suite 900  
San Diego, California 92101

Date: April 4, 2011

SIGNATURE PAGE FOR SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT

I hereby express the support of San Francisco Bay Area Rapid Transit District for the foregoing Settlement Agreement and the appended Compromise General Order.

By: Len Hardy

Name: Len Hardy

Title: Chief Safety Officer

300 Lakeside Drive - 18th Floor  
Oakland, California 94612

Date: 3/30/2011

SIGNATURE PAGE FOR SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY

I hereby express the support of Santa Clara Valley Transportation Authority for the foregoing Settlement Agreement and the appended Compromise General Order.

By: 

Name: MICHAEL HURSH

Title: Deputy Director, Maintenance & Security

3331 North First Street - Bldg C  
San Jose, California 95134-1906

Date: 30 MAR 2011

SIGNATURE PAGE FOR SFO AIRTRAIN

I hereby express the support of SFO Airtrain for the foregoing Settlement Agreement and the appended Compromise General Order.

By: 

Name: HARRY LEE MITCHELL

Title: SFO AIRTRAIN MANAGER

P.O. Box 8097  
San Francisco, California 94128-8097

Date: MARCH, 30, 2011

SIGNATURE PAGE FOR UNITED TRANSPORTATION UNION

I hereby express the support of United Transportation Union for the foregoing Settlement Agreement and the appended Compromise General Order.

By: James P. Jones

Name: JAMES P. JONES

Title: CALIFORNIA STATE DIRECTOR

1005 Twelfth Street, Suite 4  
Sacramento, California 95814

Date: 3/30/11

# APPENDIX

GENERAL ORDER NO. \_\_\_\_\_

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

**RULES AND REGULATIONS GOVERNING THE USE OF PERSONAL  
ELECTRONIC DEVICES BY EMPLOYEES OF RAIL TRANSIT AGENCIES AND  
RAIL FIXED GUIDEWAY SYSTEMS**

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Rail Transit Agencies (RTA) and Rail Fixed Guideway Systems (RFGS) operating in California must comply with the following rules governing the use of personal electronic devices by employees.

## **1 GENERAL PROVISIONS**

- 1.1** *Authority.* These rules and regulations are authorized by and implement the provisions of 49 U.S.C. § 5330; 49 C.F.R. § 659; and the California Public Utilities Code, including Sections 778, 29047, 30646, 100168, and 99152.
- 1.2** *Purpose.* The purpose of these rules and regulations is to eliminate distractions from the use of personal electronic devices by certain RTA employees operating, controlling, or working around rail transit vehicles or tracks, as defined herein. The safety of patrons, employees, and the public is of primary importance in the application of these regulations.
- 1.3** *Applicability.* These rules and regulations are applicable to all RTAs in California. This rule does not prohibit RTAs from implementing more stringent rules.
- 1.4** *Additional Rules.* The Commission may make such additional rules and regulations or changes to these rules and regulations as necessary for the purpose of safety.
- 1.5** *Exemptions or Modifications.* Requests for exemptions or modifications from these rules and regulations shall contain a full statement of the reasons justifying the request. A request must demonstrate that safety would not be reduced by the proposed exemption or modification. Any exemption or modification so granted shall be limited to the particular case covered by the request. All exemptions and modifications shall require Commission approval.

## **2 DEFINITIONS**

- 2.1** *Employee* means a person employed by an RTA in California, or a contractor working on behalf of such RTA.
- 2.2** *Fouling a track* means placing oneself, or any equipment or appurtenance in an area where it could be struck by the widest equipment that could occupy the track.
- 2.3** *In-Cab Camera* means a closed-circuit audio and video recording device that is mounted in the cab of a rail transit vehicle and continuously records activities of the operator.
- 2.4** *Personal Electronic Device or PED* means any wireless or portable electronic device. This includes, but is not limited to, wireless phones, personal digital assistants, smart phones, two way pagers, portable internet devices, laptop computers, DVD players, audio players, iPods, MP3 players, games, Bluetooth devices, or any headphones or earbuds. The following devices are excluded from this definition:
- a.** RTA-owned licensed radio communications equipment such as cab-mounted or portable two-way radios with channels dedicated solely for RTA operations.
  - b.** Electronic or electrical devices prescribed by a licensed medical practitioner to permit an employee to meet minimum levels of hearing ability as required by the RTA or contractor.
  - c.** Roadway worker protection devices.
- 2.5** *On Their Person* means being located on the person or attached to the person. For instance, if the personal electronic device is attached to the belt in a case, or kept in a pocket, or placed on a strap attached to the person, it is on their person.
- 2.6** *Rail Fixed Guideway System (RFGS)* means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, cable car, automatic people mover, or automated guideway transit system used for public

transit and not regulated by the Federal Railroad Administration or not specifically exempted by statute from Commission oversight.

- 2.7** *Rail Transit Agency (RTA)* means the entity that plans, designs, constructs, and/or operates an RFGS.
- 2.8** *Rail Transit Vehicle* means an RTA's rolling stock, including but not limited to passenger and maintenance vehicles.
- 2.9** *Stowed* means put away, out of sight, off the person, not attached to the person, and not in anything on the person. For example, the personal electronic device may be placed in a duffle bag, cabinet, compartment, or locker, in a manner that does not interfere with the safe operation of the rail transit vehicle. All earpieces shall be removed from the ear, stowed, and turned off, except those hearing aid devices described in section 2.5 herein.
- 2.10** *System Safety Program Plan (SSPP)* shall be as defined in the General Order 164 series.
- 2.11** *Zero-Tolerance Policy* means a policy where the consequences to a person who does not comply with the PED use prohibitions of this General Order are written, automatic, specific, and non-discretionary. The policy may provide different consequences for different levels of risk that a particular non-compliant act could pose, as long as these levels and consequences are explicitly described in the policy.

### **3 PROHIBITED USE OF A PERSONAL ELECTRONIC DEVICE**

- 3.1** Persons shall be strictly prohibited from using electronic devices, while:
  - a.** Operating rail transit and other on-track vehicles. Devices must be turned off and stowed.
  - b.** Dispatching, flagging, or otherwise controlling the movement of rail transit vehicles.
  - c.** Performing any task while fouling the tracks.

**3.2** Any person may use a cell phone to report a fire or other life-threatening emergency when the RTA-issued communication equipment is not functioning, provided the rail transit or on-track vehicle is stopped and the person is not in the controlling compartment of the rail transit vehicle. Emergency use to push a powerless unoccupied train where cell phone communication is necessary to safely direct the move and no other communication means are available is also allowed if performed with supervisory approval.

#### **4 IN-CAB CAMERAS AND OTHER TECHNOLOGY.**

**4.1** RTAs shall install inward-facing in-cab cameras in the controlling compartment of rail transit vehicles. Cameras shall be focused on the rail transit vehicle operator during rail transit vehicle operations and shall have a continuous recording loop covering at least eight (8) days of operations. Exclusions include:

- a.** On-track maintenance vehicles.
- b.** Vehicles without on-board operators.
- c.** Historic street cars upon an exemption request by an RTA, and with approval from the Consumer Protection and Safety Division Director or Deputy Director. Requests shall be by type and model of vehicle, and shall include the justification for not installing cameras and the mitigation measures taken in lieu of cameras to ensure compliance with the use prohibitions in Section 3.

**4.2** Inward-facing in-cab cameras must be installed and in service no later than 36 months after the effective date of this order.

**4.3** Recording review. At a minimum, video loop recordings shall be reviewed for violations of this General Order under the following conditions:

- a.** After any derailment.
- b.** After any impact between a rail transit vehicle and any other vehicle, object, or person.

- c. After any activity or event on the right-of-way that results in death to any person, injury to any person that requires medical treatment, or injury to any RTA employee.
  - d. After any reported complaint or observation of 1) an alleged violation of this General Order, or 2) a rules violation that may suggest distraction due to PED use as a possible cause.
  - e. For the purposes of conducting a video-based rules-compliance testing program to ensure compliance with the provisions of this General Order.
  - f. Nothing in this General Order shall preclude any RTA from using the video equipment as a tool in reviewing operator performance and ensuring compliance with any operating rule.
- 4.4** Recording retention – Video recordings shall be saved and retained on separate storage media if a rail transit vehicle operator is observed violating this General Order. Recordings shall be retained at least until the last appeal of any litigation or disciplinary action is complete.
- 4.5** An RTA may submit for Commission approval a plan to use a new and/or different technology that provides at least as effective means to ensure compliance with this General Order. If approved by the Commission, the technology may be used in lieu of the inward-facing in-cab camera and/or its recording device, and/or certain other provisions of this General Order.
- 4.6** In the interim period before inward-facing cameras are installed and in-use, RTAs shall conduct random evaluations regarding PED use at a minimum of ten (10) percent of the rail transit vehicle operator population per quarter.

## **5 REQUIREMENTS TO IMPLEMENT A ZERO-TOLERANCE POLICY AND PROGRAM**

- 5.1** Each RTA shall develop, implement, and comply with a zero tolerance policy and program regarding prohibited PED usage. The policy shall include discipline up to and including discharge.
- 5.2** RTAs shall include or reference their zero-tolerance policy and program in their SSPP and rail operations rules.
- a.** The RTA's zero-tolerance policy and program shall include actions sufficiently serious to be reasonably expected to prevent violations of this General Order.
  - b.** Within 90 days of the effective date of this General Order, each RTA must file its zero-tolerance policy and program with the Commission.
  - c.** The policies must describe the actions the RTA will take to address violations, as well as the process afforded the employee to appeal the violation and discipline.
  - d.** RTAs shall keep records of violations of PED use prohibitions and make them available to Commission staff upon request.
- 5.3** RTAs shall notify and instruct their employees on the provisions of the RTA's PED zero-tolerance policy and program regarding electronic device use. Each RTA shall provide a refresher course on its zero-tolerance policy and program at least every two (2) years. Records showing compliance with this requirement shall be maintained for a minimum of three (3) years.
- 5.4** Each RTA shall post a PED use prohibition reminder decal inside each rail transit vehicle cab and on the passenger-facing side of the cab door on rail transit passenger vehicles. This notice shall also be placed at all locations where RTA employees report for duty.

## **6 REQUIREMENTS FOR MONITORING AND ENFORCEMENT**

- 6.1** Prior to video camera installation and operation, RTAs shall develop, and include or reference in their SSPP, a video-based enforcement and random monitoring program designed to ensure compliance with this General Order, as part of their existing program of operational evaluations.
- a.** Each RTA, as a part of their SSPP, shall submit their program to the Consumer Protection and Safety Division (CPSD) Director or Deputy Director for review and approval at least 90 days prior to video camera operation.
  - b.** Program revisions must be submitted to the CPSD Director or Deputy Director for approval, and will be included in the annual revision of the SSPP.
- 6.2** RTAs shall periodically conduct operational evaluations and inspections to determine the extent of compliance with this General Order.
- 6.3** Records of operational evaluations and/or inspections shall be maintained for a minimum of three (3) years.

## **7 REQUIREMENTS FOR EMERGENCY CONTACT PROCEDURES**

RTAs shall implement procedures by which employees addressed in this General Order can be contacted in the event of a personal or family emergency. These procedures shall include, at minimum, the routing of that contact through a designated person or division within the RTA. These procedures shall be communicated to all affected employees in writing, and copies shall be available to Commission staff and be included or referenced in an RTA's SSPP when it is revised.

# **ATTACHMENT B**

# Settlement Conference

CPUC R. 08-10-007

505 Van Ness Avenue, San Francisco

March 16, 2011 = 11:00 a.m.

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# CALIFORNIA PUBLIC UTILITIES COMMISSION

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FILER: CPUC  
LAST CHANGED: MARCH 21, 2011

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