Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of San Francisco Municipal Transportation Agency, Regarding Ongoing Public Safety Issues.	Investigation 11-02-017 (Filed February 24, 2011)

DECISION ADOPTING SETTLEMENT AND CLOSING PROCEEDING

Summary

By today's decision, we approve the proposed Settlement Agreement filed and served on March 21, 2012, by the Consumer Protection and Safety Division and the San Francisco Municipal Transportation Agency. We find that the uncontested, all-party Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

The Settlement Agreement resolves all outstanding issues in this proceeding and, importantly, sets up procedures to improve inter- and intra-agency communication and coordination going forward. The provisions of the Settlement Agreement increase public safety and are therefore approved.

Background

On February 24, 2011, the Commission issued Order Instituting Investigation (I.) 11-02-017, and named San Francisco Municipal Transportation Agency (SFMTA) as the Respondent in this investigation. I.11-02-017 alleged that SFMTA violated certain Commission General Orders, including 143-B, 164-D, and 127, state and federal codes, and SFMTA's own procedures, neglected

system maintenance, and failed to respond to Commission Staff requests and recommendations, which resulted in alleged unsafe operations. SFMTA sought an extension of time to file and serve its response, which was granted by Administrative Law Judge (ALJ) Ruling issued on March 25, 2011; accordingly, SFMTA timely filed and served its response on April 27, 2011. SFMTA contended that many of the alleged violations had long since been corrected, that certain rules and regulations do not apply to SFMTA, that plans to correct deficiencies were already in place, and that there were certain misunderstandings of SFMTA's rules and policies.

The first prehearing conference was held on May 16, 2011, at which time the parties, namely, SFMTA and the Commission's Consumer Protection and Safety Division (CPSD), indicated they wished to pursue mediation under the Commission's Alternative Dispute Resolution Program. The parties met actively with the neutral mediator and, at the second prehearing conference, held on September 29, 2011, stated that settlement discussions were well underway. The parties filed joint status reports on October 17, 2011 and November 16, 2011. In the second status report, parties reported that settlement discussions were productive but requested a three-month extension of time to complete negotiations. The assigned ALJ granted that request on December 1, 2011 and ordered the parties to file a motion for approval of settlement or plans for litigation by February 29, 2012. We confirmed this order in Decision (D.) 12-01-014, in which we extended the 12-month statutory deadline in this proceeding to accommodate the ongoing settlement discussions.

On February 29, 2012, the parties filed a joint status report, stating that all issues in the proceeding had been substantially resolved but that in finalizing the agreement, a misunderstanding had arisen regarding certain details of one

provision. The parties requested an extension of time to March 21 to file the anticipated settlement at this Commission. The ALJ granted this request on March 13, concluding that it was reasonable to provide additional time to finalize the agreement and to allow SFMTA's Board to consider the proposed Settlement Agreement at its regularly-scheduled meeting on March 20, 2012.

The parties duly filed and served the proposed Settlement Agreement on March 21, 2012, at which time the proceeding was submitted. The proposed agreement is uncontested and resolves all issues in this proceeding. No evidentiary hearings were held.

Overview of Proposed Settlement Agreement

The proposed Settlement Agreement addresses the concerns and alleged defects raised by CPSD in the following areas:

1. Alleged defects with track in and around the intersection of Church and Duboce Streets;
2. Alleged abandoned operation of the Automatic Train Control System in the Sunset Tunnel in violation of General Order 127;
3. Alleged deficiencies with the loop cable that provides communication required for the operation of the Automatic Train Control System in the Market Street/Twin Peaks Tunnel;
4. Correct implementation of blue flag safety procedures to protect SFMTA employee safety; and
5. Correction of inter-agency communication issues.

Rule 12.1(d) states that "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest." We address the specifics of the Settlement Agreement and discuss how the overall provisions of the Settlement Agreement conform to our Rules of Practice and

Procedure below. The Settlement Agreement is attached to this decision as Attachment A.

The Settlement is Reasonable in Light of the Whole Record

We are pleased that the proposed Settlement Agreement expressly addresses how public safety is served by this proposal. The parties state that the settlement, as a whole, maximizes resources allocated to public safety improvements in several areas. For example, the deteriorated track and other alleged defects at the intersection of Church and Duboce Streets will be corrected by the Rail Replacement Project. The first phase of this process began in May 2011 and the SFMTA anticipates that the second phase will be completed by the end of March 2013. The SFMTA will provide CPSD with quarterly status reports until the Rail Replacement Project is complete.

In addition, the proposed Settlement Agreement addresses communications required for the operation of the Automatic Train Control System in the Market Street/Twin Peaks tunnel. While I.11-02-017 alleged numerous deficiencies that might pose a public safety threat with the "loop cable" that provides communication required for the operation of the Automatic Train Control System in this particular tunnel, SFMTA disputes the allegations and contends that any Automatic Train Control System failures could interfere with service, but would not create public safety hazards. In the proposed Settlement Agreement, SFMTA has agreed that the induction loop cable should be replaced and the project is expected to be completed by August 31, 2012. The parties acknowledge that replacing the loop cable will increase the functionality and reliability of the Automatic Train Control System in the Market Street/Twin Peaks Tunnel. This will result in fewer operations that are in manual mode, and the automatic control will increase public safety.

The record demonstrates that the parties have devoted a considerable amount of time to discussing the safety concerns raised by CPSD, and SFMTA has demonstrated to CPSD's satisfaction that SFMTA has increased its attention to safety. We concur that the proposed settlement will improve public safety based on the record before us and is reasonable in light of the whole record.

The Settlement is Consistent with the Law

The parties have carefully considered the alleged violations of the Commission's General Orders. Rather than engaging in unproductive disputes regarding the Commission's jurisdiction and the applicability of various General Orders, including General Order 127, the parties have undertaken corrective action. For example, SFMTA has commissioned a professional hazard analysis of the Sunset Tunnel, which will be performed by a licensed train control signal engineer. The scope of work has been agreed to by the parties and is attached to the proposed Settlement Agreement. SFMTA will also provide CPSD with a Corrective Action Plan within 60 days of receiving a final hazard analysis report.

In addition, CPSD has alleged that SFMTA has not properly implemented blue flag safety procedures to protect its employees. CPSD acknowledges that SFMTA has not violated any statute or General Order, while SFMTA acknowledges that such procedure is common among rail transit agencies and that such safety protocols can be effective. As CPSD acknowledges and, as set forth in Section 10 of the Settlement Agreement, SFMTA has recently adopted and implemented a blue flag safety protocol and SFMTA agrees to comply with its Standard Operating Procedures related to these procedures.

We find that the parties have carefully analyzed the allegations in I.11-02-017 and the specific provisions set forth in the proposed Settlement

Agreement are designed to ensure that the Settlement Agreement is consistent with the law.

The Settlement is in the Public Interest

We are pleased that the Settlement Agreement goes beyond the specific issues raised in I.11-02-017 and addresses improved communication going forward, both between the agencies and within each agency. Issues related to communication between the parties were raised in both the Investigation and the Response. The parties have worked hard to open the lines of effective communication and have stated that the settlement process has improved their working relationships. The parties have memorialized a variety of ways in which they will continue to work together to foster productive working relationships in a manner that focuses on the safety of SFMTA's system. We approve of this approach, which helps to encourage the safety culture that we are striving to inculcate in all of our regulated utilities. For example, in Section 3 of the proposed Settlement Agreement, the parties acknowledge that communication needs to improve and that such efforts will lead to more effective public safety. Sections 7, 8, and 9 of the Settlement Agreement set forth specific activities that are intended to facilitate more productive communication between the parties, as we discuss below.

Section 7 discusses SFMTA's Senior Management Safety Committee. This Safety Committee meets on a monthly basis to consider implementation of the SFMTA Rail System Safety Program Plan and to discuss inspections, accidents, system modifications, and proposed hazard resolutions. The parties state that regular meetings of the Senior Management Safety Committee will help ensure that safety issues are given the required high level of management focus to facilitate the coordination of repair work and capital improvements. We concur.

Section 8 sets forth a stipulation that the Monthly Safety Coordination meetings between CPSD and SFMTA have resumed and will continue on a regular basis. These meetings will address corrective action plans, accident reports, inspection reports, and efficiency testing. Both parties acknowledge the importance of these meetings which will facilitate communication and the identification and correction of public safety issues. We are pleased that the parties are working together "to efficiently identify and resolve any hazards or other safety concerns in the SFMTA system in a mutually agreeable manner."[1] We agree that such meetings will allow CPSD to gain additional insights into SFMTA's system and will allow parties to jointly discuss risk analysis, prioritization of safety issues, and problem-solving – all to the benefit of public safety.

Section 9 sets forth SFMTA's agreement to develop and implement an efficiency testing policy to test rail operator compliance with SFMTA rules, procedures, and policies. CPSD will comment on the efficiency testing policy before it is implemented and SFMTA will include remedial action plans, including retraining as needed, as part of its policy. The parties acknowledge that this provision is not a matter that I.11-02-107 addressed, but that it is an effective method of identifying and correcting operator error, and one that is utilized by other Rail Transit Agencies regulated by this Commission. Again, we commend the parties for going beyond the allegations of the Order Instituting Investigation to address system safety in a holistic manner. We agree with the parties: since operator error can be the cause of many accidents, the efficiency

[1] Joint Motion to Approve Settlement Agreement at 7.

testing policy, which is focused on correcting operator errors, will improve public safety and is in the public interest.

The proposed Settlement Agreement recognizes that requiring SFMTA to pay a fine or a penalty would not be in the public interest, because such an approach would reduce SFMTA's funds available to operate and maintain its transit services and programs in a safe and reliable manner. Therefore, in lieu of imposing a penalty, Section 11 of the proposed Settlement Agreement requires SFMTA to undertake several facility maintenance initiatives that the parties maintain will enhance safety for SFMTA's passengers and for the public at large. It is reasonable to approve this approach in this particular instance. The parties explain that they have jointly determined that an allocation of approximately $6 million in capital expenditures to the following projects will improve the safety and reliability of the system as a whole:

Project	Method	Increase in Public Safety
Eureka Curve Rail Replacement	Replace approximately 1000 feet of inbound and outbound track from Eureka Curve to Castro Station, includes replacement of inbound guard rail and installation of track lubricating machine.	Allows trains to safely increase speed and improves service reliability, public safety, and quality of ride for 85,000 passengers. To be completed on or before September 30, 2012.
Signal Standardization project	Upgrade of 27 "home" signals by implementing a standard signal package consisting of one signal head with four standardized lights along	Creating consistency among the "home" signals will reduce signal maintenance costs and will increase system performance. To be

	with two sets of "T" signals. A "home" signal automatically governs train movements through "interlockings" in multiple directions.[2]	completed on or before December 31, 2013.
Muni Metro Turnaround Track Replacement	Replacement of the Muni Metro Light Rail Transit revenue track from east of the Embarcadero Station to the Ferry Portal, includes both pocket tracks.	The Muni Metro Turnaround was designed to improve turnback operations, reduce headways, and provide underground train storage to Increase system capacity. Replacement of damaged and worn track will alleviate safety concerns, improve reliability and benefit riders in an asset that serves 230,000 trains per year. To be completed on or before December 31, 2013.
Duboce Portal Rail Replacement project	Replace track from the subway at the Duboce Portal to the surface level at Church and Duboce; both inbound and outbound tracks have a significant curve and grade change	Replacement of these sections of track, which has never been fully replaced, will alleviate safety concerns arising from worn track at a heavily traveled portal and will improve system reliability. To be completed on or before

[2] Although not defined in the Motion, "interlocking" appears to be a commonly-used term in rail. An interlocking is a signal arrangement that prevents conflicting movements through various track arrangements, such as junctions or spurs.

		December 31, 2013.

The parties have set forth the reasoning underlying the proposed Settlement Provisions in plain and clear language and have demonstrated that those provisions serve the public interest. In sum, we find that the proposed Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The parties have negotiated a reasonable settlement that benefits public safety. We adopt the proposed Settlement Agreement without modification.

Categorization and Need for Hearings

In the Order instituting this investigation, the Commission determined preliminary that this was an adjudicatory proceeding and that evidentiary hearings maybe necessary. Given the Settlement Agreement, the hearing determination is changed to state that no evidentiary hearings are necessary.

Waiver of Comment on Decision

This decision adopts an uncontested, all-party settlement. Pursuant to Pub. Util. § 311(g)(2) and Rule 14.6(c)(2), the Commission may reduce or waive the period for public review and comment of recommended decisions in an uncontested matter that grants the relief requested. Accordingly, the otherwise applicable period for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

Findings of Fact

1. CPSD and SFMTA filed an all-party, uncontested proposed Settlement Agreement on March 21, 2012 that resolves all issues in I.11-02-017.

2. The proposed Settlement Agreement addresses concerns raised by CPSD regarding: 1) alleged defects with track in and around the intersection of Church and Duboce Streets; 2) the alleged abandoned operation of the Automatic Train Control System in the Sunset Tunnel in violation of General Order 127; 3) alleged deficiencies with the loop cable that provides communication required for the operation of the Automatic Train Control System in the Market Street/Twin Peaks Tunnel; 4) correct implementation of blue flag safety procedures; and 5) correction of inter-agency communication issues.

3. Replacement of deteriorated track and other alleged defects at the intersection of Church and Duboce Streets will increase the safety of the system; these efforts began in May 2011 and should be completed by the end of March 2013.

4. Replacement of the induction loop cable that provides communication required for the operation of the Automatic Train Control System in the Market Street/Twin Peaks tunnel will increase the functionality and reliability of the Automatic Train Control System in that tunnel.

5. Increased functionality and reliability of the Automatic Train Control System in the Market Street/Twin Peaks tunnel should lead to increased automatic operations, which will increase public safety because there is less reliance on manual operations and hence less chance of operator error.

6. Rather than engaging in unproductive disputes regarding the Commission's jurisdiction and the applicability of General Order 127, the parties have appropriately undertaken corrective action and SFMTA will engage a licensed train control signal engineer to provide a professional hazard analysis of the Sunset Tunnel.

7. The parties will agree on the scope of work and SFMTA will provide CPSD with a Corrective Action Plan for the Sunset Tunnel within 60 days of receiving a final hazard analysis report.

8. The parties have addressed certain procedures that will help protect the safety of SFMTA's employees, such as blue flag safety procedures.

9. While CPSD acknowledges that blue flag safety procedures are not required by any statute or General Order, SFMTA acknowledges that such procedures are common among rail transit agencies and that such safety protocols can be effective.

10. The proposed Settlement Agreement includes several provisions to address improved communications going forward, both between the agencies and within each agency.

11. Regular meetings of SFMTA's Senior Management Safety Committee will help ensure that senior management focuses appropriately on safety concerns and will facilitate the coordination of repair work and capital improvements.

12. Monthly Safety Coordination meetings between CPSD and SFMTA staff will include discussion of corrective action plans, accident reports, inspection reports, and efficiency testing. These meetings will allow parties to work together to resolve hazards and other safety concerns on SFMTA's system and will allow parties to jointly discuss risk analysis, to prioritize safety issues and repairs appropriately, and lead to productive joint problem-solving.

13. An efficiency testing policy will test rail operator compliance with SFMTA rules; the proposed Settlement Agreement provides for CPSD to comment on the proposed policy prior to implementation and SFMTA will include remedial action plans, including retraining as needed, as part of its policy. Such an

approach is an effective method of identifying and correcting operator error and is utilized by other Rail Transit Agencies regulated by this Commission.

14. In lieu of a penalty, the proposed Settlement Agreement requires SFMTA to allocate approximately $6 million in capital expenditures to improve facilities and increase public safety. The facility maintenance projects include the following, as set forth in Section 11 of the proposed Settlement Agreement: Eureka Curve Rail Replacement, Signal Standardization, Muni Metro Turnaround Track Replacement, and Duboce Portal Rail Replacement.

15. There are no issues of disputed material fact and therefore there is no need to hold evidentiary hearings.

Conclusions of Law

1. The record demonstrates that the parties have devoted a considerable amount of time to discussing and resolving the safety concerns raised by CPSD, and SFMTA has demonstrated to CPSD's satisfaction that SFMTA has increased its attention to safety.

2. The proposed Settlement Agreement is reasonable in light of the whole record.

3. The parties have carefully analyzed the allegations in I.11-02-017 and the specific provisions set forth in the proposed Settlement Agreement are designed to ensure that the Settlement Agreement is consistent with the law.

4. The parties have set forth the reasoning underlying the proposed Settlement Agreement provisions and have demonstrated that those provisions serve the public interest.

5. In sum, the uncontested, all-party Settlement Agreement complies with Article 12 of the Commission's Rules of Practice and Procedure and is reasonable

in light of the whole record, is consistent with the law, and is in the public interest.

6. In the interest of increased public safety, it is reasonable for the Settlement Agreement to go beyond the allegations of I.11-02-017 and to address system safety in a holistic manner.

7. It is reasonable to approve allocations of capital expenditures for important facilities maintenance projects, rather than to impose a penalty and fines on a public agency, which would limit the funds that can be spent on system reliability and safety.

8. The provisions of the Settlement Agreement (Attachment A) are reasonable, increase public safety, and should be approved.

9. The decision should be effective today to provide certainty to the parties and allow the provisions of the Settlement Agreement to be implemented in a timely manner.

10. I.11-02-017 should be closed.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of the San Francisco Municipal Transportation Agency and the Consumer Protection and Safety Division for Approval of Settlement Agreement is granted and the Settlement Agreement (Attachment A) is approved.

2. No evidentiary hearings are necessary.

3. Order Instituting Investigation 11-02-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
SETTLEMENT AGREEMENT[1]

ATTACHMENT I1102017 Minkin

[1] Attachments to the Settlement Agreement are not included here.