

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**CONSUMER PROTECTION & SAFETY DIVISION****RESOLUTION SX-88
September 18, 2008****RESOLUTION**

This resolution temporarily prohibits the personal use of commercial mobile radio services and devices and other personally owned electronic devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators except for personal emergency communications which take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel.

Summary

Neither the Federal Railroad Administration nor the Federal Transit Administration presently have a rule or regulation specifically prohibiting the personal use of commercial mobile radio services on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators while performing their duties in operating trains or rail transit vehicles. This resolution remedies this omission by prohibiting the use of commercial mobile radio services by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators while operating passenger trains, freight trains, or rail transit vehicles within the State of California for any reason other than emergency communications which take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel.

Background

On June 14, 2008, a rail transit vehicle operator for the San Francisco Municipal Railway was involved in a collision and injury accident with another transit agency train. That collision may have resulted from the inappropriate use of a commercial mobile radio services (e.g., cell phone) while operating the train. The fatal Metrolink collision with a Union Pacific Railroad freight train on September 12, 2008, at Chatsworth, California, may have been at least partially caused by the inappropriate use of commercial mobile radio services by the train's engineer. Commercial mobile radio services are defined by Public Utilities Code Sections 216.8 and 224.4 as including commercial mobile phone, data, paging and satellite services.

Notice

This matter was added to the Commission's September 18, 2008 agenda pursuant to Government Code Section 11125.3(a)(2) and notice was provided pursuant to that section.

Discussion

Because of the imminent danger to passengers, railroad and transit patrons, and the general public, from the inappropriate use of commercial mobile radio services by railroad engineers, conductors, or transit vehicle operators while performing their duties in operating the railroad train or rail transit vehicle, it is necessary and reasonable to immediately institute a ban on personal use of commercial mobile radio services and devices and other personally owned electronic devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators during the operation of a railroad train or rail transit vehicle, pending the development of permanent rules governing the use of commercial mobile radio services during railroad operations.

Comments

Public Utilities Code section 311(g)(1) generally requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced or waived pursuant to Commission adopted rule.

The 30-day comment period for this resolution has been waived in accordance with the provisions of Rule 14.6(c)(9). Rule 14.6(c)(9) provides that the Commission may waive or reduce the comment period for a decision when the Commission determines that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of Rule 14.6(c)(9), "public necessity" refers to circumstances in which the public interest in the Commission's adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment, and includes circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would cause significant harm to public health or welfare. The public necessity in this case is that the Commission needs to take immediate action to temporarily prohibit the use of commercial mobile radio services for purposes other than emergency communications. In this case, the public interest in preventing imminent danger to railroad and transit passengers and the general public outweighs the public interest in being able to comment on a resolution that simply prohibits unsafe and unauthorized use of commercial mobile radio services by railroad engineers, conductors, and rail transit operators. Therefore, pursuant to Rule 14.6(c)(9), we waive the review and comment period on this resolution.

Findings

1. On June 14, 2008, the inappropriate use of commercial mobile radio services during the course of operations of a rail transit train, may have caused a train collision.
2. On September 12, 2008, a fatal train collision between a Union Pacific Railroad freight train and a Metrolink passenger commuter train may have been caused, at least to some extent, by the inappropriate use of commercial mobile radio services by the train's engineer.
3. No existing federal or state laws, rules, or regulations prohibit such inappropriate use of commercial mobile radio services.¹
4. Except for personal emergency communications which take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel, personal use of commercial mobile radio services and devices and other personally owned electronic devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators is prohibited poses an imminent danger to passengers, railroad and transit patrons, and the general public.
5. The Consumer Protection and Safety Division should prepare an Order Instituting Rulemaking to determine whether this, or other measures, should be adopted and whether such measure(s) should be adopted on a permanent basis.
6. The National Transportation Safety Board exempts the actions directed here during the course of an accident investigation and before a final determination when necessary to prevent future accidents.²

Therefore IT IS ORDERED that:

1. Personal use of commercial mobile radio services and devices and other personally owned electronic devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators is prohibited except for personal emergency communications

¹ See National Transportation Safety Board's Railroad Accident Report 03/01, concerning the collision of two BNSF trains at Clarendon, Texas, adopted June 3, 2003, at page 16, "Federal regulations do not prohibit a locomotive engineer from using a cell phone while at the controls of a moving train."

² 49 C.F.R. Pt. 831.13 (b), "Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action."

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which take place when the train or transit vehicle is stopped and with the approval of the appropriate management personnel.

2. This prohibition is adopted until such time as the Commission shall terminate or modify it in the Order Instituting Rulemaking referenced below.
3. The Consumer Protection and Safety Division is directed to prepare for an October agenda an Order Instituting Rulemaking to determine whether this, or other measures, should be adopted on a permanent basis.

This Resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on _____, the following Commissioners approving it.

PAUL CLANON
Executive Director