

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

August 30, 2007

Agenda ID #6943

## TO PARTIES OF RECORD IN DRAFT RESOLUTION ROSB-001

This draft resolution regarding adopting a railroad carrier citation program for enforcing compliance with general orders and other requirements, including procedures for appeal of citations issued to railroad carriers, will be on the agenda at the October 4, 2007 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

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 September 24, 2007, and reply comments served no later than October 1, 2007. 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 Judges Vieth and Cooke at [xjv@cpuc.ca.gov](mailto:xjv@cpuc.ca.gov) and [mlc@cpuc.ca.gov](mailto:mlc@cpuc.ca.gov), and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by JET

Angela K. Minkin, Chief  
Administrative Law Judge

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Attachment

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

Resolution ROSB-001  
Railroad Operations Safety Branch  
Consumer Protection and Safety Division  
October 4, 2007

**RESOLUTION**

RESOLUTION ROSB-001. Adopts a Railroad Carrier Citation Program for Enforcing Compliance with General Orders and Other Requirements, Including Procedures for Appeal of Citations Issued to Railroad Carriers.

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**Summary**

This Resolution approves a citation program under the administration of the Director of the Consumer Protection and Safety Division (CPSD) for enforcing compliance with certain General Orders and other requirements for railroad carriers operating in California. Specifically, the citation program will enforce compliance with the requirements for walkways, clearances, highway-rail grade crossings, notification of hazardous materials release, and railroad operating rules. Staff is delegated authority to draft and issue citations for specific violations and levy penalties in specified amounts as set forth in Appendix A.

Delegation of authority to CPSD will allow prompt action by Staff to protect the public and fulfill the objectives of the Commission's rail safety responsibilities. This Resolution is based on the authority vested in the Commission by the California Constitution, California statutes and court decisions, and prior Commission decisions and orders. Nothing in this Resolution diminishes, alters, or reduces the Commission's existing authority to promote and enforce public safety requirements.

**Background**

California law, including Pub. Util. Code § 7, allows delegation of powers by the Commission.<sup>1</sup> The Commission may delegate to its Staff the performance of certain functions, including investigation of facts preliminary to agency action and the

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<sup>1</sup> D.06-01-047, mimeo. at pp. 9-12.

assessment of specific penalties for certain types of violations.<sup>2</sup> Over the last several years the Commission has developed and enhanced its citation programs in numerous areas, including household good movers, charter party carriers, passenger stage corporations, maintenance and operation of power plants, slamming by telecommunications providers, and compliance with resource adequacy requirements.

A citation program administered by Staff for specified violations of the Commission's General Orders and other requirements that apply to railroad carriers will allow prompt action by Staff to protect consumers, minimize enforcement costs, and fulfill the objectives of the Commission's railroad safety responsibilities. This citation program is consistent with other approved citation programs. For example, the types of violations that Staff may enforce by citation and the citation procedures are substantially similar to those approved in General Order 167 for the citation program administered by Staff for operation and maintenance standards for electric generation facilities.<sup>3</sup> The amounts of the proposed penalties also are similar to those approved in General Order 167. The penalty for failure to notify the California Office of Emergency Services of the release of hazardous materials is higher than levels adopted in other citation programs, but well within the level of penalties allowed pursuant to Pub. Util. Code § 2107, and reflects the severe health and safety impact that could occur if notification does not occur in a timely manner.

In addition, California and the CPUC may impose fines and penalties on railroads for violations of California rail safety laws and regulations not "covered" by federal law or regulations, based on the Local Safety Hazard decisions in the District Court for the Northern District of California and in the U.S. Court of Appeals for the Ninth Circuit. "Because the [Federal Railroad Administration] FRA merely deferred making a rule, rather than determining that no regulation was necessary, the state can legitimately seek to fill this gap ... we concluded that the FRSA [Federal Railroad Safety Act] did not preempt CPUC's imposition of civil penalties against the Railroads for failing to follow their own internal operating rules...". (*Union Pac. R.R. v. Cal. Pub. Util. Comm'n*, 346 F.3d 851, 868 (9<sup>th</sup> Cir. 2003).) "While Congress clearly wanted a single, national entity to enforce *federal* railway laws, this statement does not speak to state enforcement of rules governing subject matters that are *not* covered by federal law. Indeed, in this regard, the FRSA savings clause specifically permits states to enforce state rules, like the one at issue here, that address a subject matter not covered by the FRSA." (*Union Pacific R.R. Co. v. Cal. Public Util. Comm'n*, 109 F.Supp.2d 1186, 1218 (N.D. Cal. 2000).)

The issuance of a citation for a specified violation is not mandatory. In enforcing compliance with railroad safety requirements, or in response to any Specified Violation (see Appendix A), the Commission may initiate any authorized formal proceeding or

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<sup>2</sup> *Id.*

<sup>3</sup> See also Resolution ALJ-187, Sept. 22, 2005, and Resolution UEB-001, Aug. 24, 2006.

pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission's enforcement of this Resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies.

### **Citation Program**

The citation program authorizes the Railroad Operations Safety Branch (ROSB) of CPSD to issue citations to railroad carriers for violation of specified Public Utilities Code sections, Commission General Orders, and other requirements. A carrier issued such a citation may accept the fine imposed or contest it through a process of appeal. The Commission adopts the following procedures to govern the issuance and appeal of these citations.

1. *Citation: Contents.* The citation served upon the respondent by the investigator shall include:
  - (a) A specification of each alleged violation as provided in Appendix A;
  - (b) A statement of the facts upon which each alleged violation is based;
  - (c) A statement that the respondent may either pay the amount of the fine set forth in the citation or appeal the citation, as set forth herein, and that the respondent will forfeit the right to appeal the citation by failing to do either of these things within the allowable period;
  - (d) An explanation of how to file an appeal, including an explanation of the respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter; and
  - (e) A form of Notice of Appeal, and the form for requesting an interpreter.
2. *Citation: Response.* The respondent, within 20 days after the date of service of the citation, shall either remit payment of the full amount of the fine to CPSD, agree with CPSD on conditions for payment, or serve a Notice of Appeal upon CPSD. Upon request made to CPSD before the expiration of this deadline, the time to pay the fine or serve a Notice of Appeal may be extended by CPSD for a reasonable period not to exceed 30 days. CPSD may, in its discretion, grant one additional extension at the request of the respondent.
3. *Citation: Payment of fine; default.* If the respondent pays the full amount of the fine within the time allowed hereunder, the citation shall become final. If the respondent, within the time allowed pursuant to Paragraph 2, fails to pay the

full amount of the fine or to file a Notice of Appeal, or if the respondent, having entered into an agreement with CPSD, fails to comply with any provision of that agreement, the respondent shall be in default, and the citation shall become final. In this event, the respondent shall have forfeited its right to appeal the citation. If the respondent fails to pay the full amount of the fine within 30 days thereafter, CPSD may take all necessary action provided by law to recover any unpaid fine and ensure compliance with applicable statutes and Commission orders.

4. *Citation: Appeal.*

- (a) The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear appeals of citations.
- (b) Appeals of citations shall be heard in the Commission's San Francisco courtrooms on regularly scheduled days. Appeals shall be calendared accordingly, except that a particular matter may be recalendared at the direction of the designated Administrative Law Judge.
- (c) The appeal shall be brought by serving a Notice of Appeal upon CPSD, and the respondent shall indicate the grounds for the appeal in the notice. CPSD shall promptly advise the Chief Administrative Law Judge upon receipt of a timely Notice of Appeal.
- (d) Upon advice from CPSD that a citation has been appealed, the Chief Administrative Law Judge shall promptly forward the matter to the designated Administrative Law Judge, who shall set the matter for hearing on the first Citation Calendar not less than 10 days after advice of the appeal is received from CPSD. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- (e) The respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- (f) The respondent may be represented at the hearing by an attorney or other representative, but such representation shall be at the respondent's sole expense.
- (g) At the hearing, CPSD shall open and close. The Administrative Law Judge may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.

- (h) Ordinarily, the appeal shall be submitted at the close of the hearing. In the discretion of the Administrative Law Judge upon a showing of good cause, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.
- (i) The Administrative Law Judge shall issue an order resolving the appeal not later than 60 days after the appeal is submitted, and the order shall be placed on the first available agenda, consistent with the Commission's applicable rules.
- (j) From the date that CPSD receives a Notice of Appeal to and including the date when the final order is issued, neither the respondent nor the investigator, or agent or other person on behalf of the respondent or investigator, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge, except as expressly permitted under these procedures or as to procedural matters.

### **Notice**

A draft of this resolution was issued on August 30, 2007, for public review and comment. It was served on [all known California railroad companies] and by notice in the Commission's Daily Calendar.

### **Comments**

The draft resolution of the Consumer Protection and Safety Division in this matter was mailed in accordance with Pub. Util. Code § 311 and Rule 14.2(c) of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**IT IS ORDERED** that the following procedures shall govern appeals of citations for violation of statutes or Commission orders relating to railroad carriers:

1. The citation program described above and the Specified Violations and Scheduled Penalties, Appendix A, are hereby adopted.
2. Authority is delegated to the Consumer Protection and Safety Division, Railroad Operations Safety Branch, to issue citations and levy Scheduled Penalties for the Specified Violations set forth in Appendix A to enforce compliance by railroad carriers with safety requirements.
3. The issuance of a citation for a Specified Violation is not mandatory. In enforcing compliance with railroad safety requirements or in response to any specified violation, the Commission may initiate any formal proceeding authorized by the

California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.

4. Nothing in this Resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.
5. 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 \_\_\_\_\_, 2007, the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

**APPENDIX A**

**SPECIFIED VIOLATIONS AND SCHEDULED PENALTIES**

<b>Specified Violation</b>	<b>Scheduled Penalty</b>
Failure to comply with General Order (GO) 118.	\$500 per incident <i>plus</i> \$50 per day for each day in violation.
Failure to comply with GO 26-D.	\$1,000 per incident.
Failure to comply with GO 72-B.	\$500 per incident <i>plus</i> \$50 per day for each day in violation.
Failure to comply with GO 75-D.	\$500 per incident <i>plus</i> \$50 per day for each day in violation.
Failure to comply with the immediate telephone notification requirement contained within the court's Order on Reconsideration in <i>Union Pacific Railroad et al. v. CPUC</i> , C.97-3660TEH, (June 17, 1998), to the California Governor's Office of Emergency Services within two hours of the release. (See also: <i>So. Pac. Transp. Co.</i> , 57 CPUC2d at 413, COL # 17.)	\$10,000 per incident <i>plus</i> \$500 per hour beyond the first hour in violation (i.e., the third hour of failing to give telephone notification following release).
Failure to comply with the court's Final Judgment in <i>Union Pacific Railroad Co. &amp; BNSF Railway Co. v. CPUC</i> , Case No. 1:07-CV-0001 OWW-TAG, concerning Pub. Util. Code § 7662.	\$500 per incident <i>plus</i> \$50 per day for each day in violation.

**(END OF APPENDIX A)**



**Updated ROSB Service List**

**Altamont Commuter Express**

949 East Channel Street  
Stockton, CA 95202

**AMTRAK**

Joe Deely, Gn'l Mgr  
530 Water Street  
Oakland, CA 94607

**Arizona & California Railroad Co.**

Tanya Cecil  
Sub of: *Railamerica*  
5300 Broken Sound Blvd. NW  
Boca Raton, FL 33487

**BNSF**

Doug Werner, Counsel  
P.O.Box 961056  
Fort Worth, TX 76161-0056

**Brotherhood of Locomotive Engineers and Teamsters**

Tim Smith-Chairman, State Legislative Board  
610 Auburn Ravine Road, Ste C  
Auburn, CA 95603  
United States of America

**California Short Line Railroad Association**

Jalene Forbis  
Executive Director  
P.O. Box 1500  
McCloud, CA 96057

**California Northern Railroad Co.**

Don Seil, GM  
1100 Main Street, Suite 210  
Woodland, CA 95695  
Phone: (530) 661-2200 ext 1003  
Fax: (530) 661-2202  
Sub of: *RailAmerica*  
5300 Broken Sound Blvd. NW  
Boca Raton, FL 33487

**CalTrain**

Peninsula Commute Service Joint Powers Board  
Jose Cisneros (Chair)  
1250 San Carlos Ave.  
P. O. Box 3006  
San Carlos, CA 94070-1306

**Carrizo Gorge Railway Inc.**

2295 Fletcher Pkwy. Suite 101  
El Cajon, CA 92020

**Central California Traction Company**

Dave Buccolo  
2201 W. Washington Street, #12  
Stockton, CA 95203

**Central Oregon & Pacific**

Patrick Kerr  
PO Box 1083  
Roseburg, OR 97470  
Subsidiary of: *RailAmerica*  
5300 Broken Sound Blvd. NW  
Boca Raton, FL 33487

**Fillmore & Western Railway**

Dave Wilkinson  
351 Santa Clara Avenue  
Fillmore, CA 93015

**Lake County Railroad**

513 Center Street  
Lakeview, OR 97630

**Los Angeles Junction Railway**

Olivia Chavez  
4433 Exchange Avenue  
Los Angeles, CA 90058

**McCloud Railway Co.**

Jeff Forbis  
801 Industrial Way  
PO Box 1500  
McCloud, CA 96057

**Mendocino Railway**

**d.b.a. Skunk Train, Fort Bragg-Willits , CA**

Dave Magaw  
341 Industrial Way  
Woodland, CA 95776

**Modesto & Empire Traction Company**

Ken Beard  
P.O. Box 3106  
530 11th Street  
Modesto, CA 95353.

**Napa Valley Railroad Co. (Wine Train)**

Vince DeDominico  
800 8<sup>th</sup> Street  
Napa, CA 94559-3422

**Niles Canyon Railway**

Pacific Locomotive Association  
P.O. Box 2247  
Fremont, CA 94536-0247

**North Coast Railroad Authority**

Part of the Northwestern Pacific Railway Co., LLC  
419 Talmage Road, Suite M  
Ukiah, CA 95482

**North County Transit District (NCTD)**

810 Mission Avenue  
Oceanside, CA 92054

**Pacific Harbor Line, Inc.**

Andrew Fox, President  
340 West Water Street  
Wilmington, CA 90744

**Quincy Railroad Co.**

Eric Shelby  
P O Box 420  
Quincy, CA 95971

**Richmond Pacific Railroad Corp.**

John Cockle  
402 Wright Ave  
Richmond, CA 94804

**San Joaquin Valley Railroad Co.**

Randy Perry  
221 N. "F" Street  
P.O. Box 937  
Exeter, CA 93221

**Santa Cruz, Big Trees & Pacific Railway, Co.**

P.O. Box G-1  
Felton, CA 95018

**San Diego & Imperial Valley Railroad**

Pete Jespersen  
1501 National Avenue, Suite 200  
San Diego, CA 92113  
Sub of: *Railamerica*  
5300 Broken Sound Blvd. NW  
Boca Raton, FL 33487

**Santa Maria Valley Railroad**

Dave Jennings, VP/COO  
Santa Maria Valley Railroad Co.  
628 S. McClelland Street  
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E: [jennings@smvrr.com](mailto:jennings@smvrr.com)  
W: [www.smvrr.com](http://www.smvrr.com)

**Sierra Entertainment**

Chris Hart, President  
330 South Sierra Avenue  
Oakdale, CA 95361

**Sierra Northern Railway**

Dave Magaw-President  
341 Industrial Way  
Woodland, CA 95776

**Southern California Regional Rail Authority (SCRRA)**

**David Solow, CEO**

Metrolink  
700 South Flower Street, Suite 2600  
Los Angeles, CA 90017

**Stockton Terminal & Eastern Railroad**

Gregory Carney, President  
1330 N. Broadway Ave.  
Stockton, CA 95205

**Trona Railway Co.**

Mark Bennett, Mgr of Operations  
13068 Main St.  
Trona, Ca. 93562  
[bennettm@svminerals.com](mailto:bennettm@svminerals.com)  
(760) 372-2280 phone  
(760)384-8917 cell

**Union Pacific Railroad Company**

Carol Harris-General Commerce Counsel  
49 Stevenson Street, STE 1050  
San Francisco, CA 94105

**United Transportation Union**

James P. Jones, State Legislative Director  
1005 12th Street, STE 4  
Sacramento, CA 95814

**Ventura County Railroad Company, Inc.**

Pete Jespersen, General Manager  
333 Ponomo St.  
Port Hueneme, CA 93041 and  
Sub of: *RailAmerica*  
5300 Broken Sound Blvd. NW  
Boca Raton, FL 33487

**West Isle Line, Inc.**

Merle Engkle  
4582 S. Ulster Street, Suite 1700  
Denver, CO 80237

**Yreka Western Railroad**

Court Hammond  
300 East Miner Street  
Yreka, CA 96097

George Elsmore  
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505 Van Ness Avenue  
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